

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





# 76-1286

IN THE  
**United States Court of Appeals**  
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

*Plaintiff,*

v.

ALFRED DANIEL MILLER,

*Defendant.*

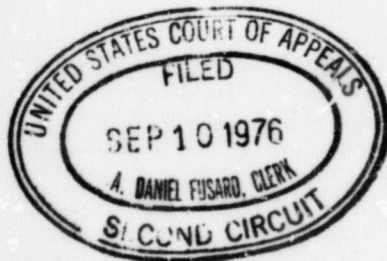
ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NEW YORK

**APPELLEE'S APPENDIX**

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# INDEX.

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	page
Suppression Hearing.....	1
Testimony of Thomas Langer.....	3
Testimony of John Gill.....	15
Trial.....	46
Testimony of Karen Rice.....	46
Testimony of Thomas Langer.....	67
Defendant's Motion for Mistrial.....	86
Testimony of John Gill.....	91
Renewal of Defendant's Motion for Mistrial.....	94
Instructions to Jury on Count III of Indictment	110
Discussion at Time of Sentence.....	114

Suppression Hearing.

ready to go on that?

1  
2 MR. WAGNER:

Yes, I am, your Honor.

3 THE COURT:

Do you want to recess?

4 MR. WAGNER:

Yes, your Honor, the witnesses are  
downstairs, I would have to get them.

5  
6 THE COURT:

All right then, five minutes.

7  
8 (Thereupon, the court was in recess

9 at 11:15 a.m.)

10  
11 PROCEEDINGS RESUMED, PURSUANT TO RECESS, COMMENCING AT 11:30 A.M.

12

13

(Defendant present, counsel present,  
jury absent.)

14

15

16

17

18

19

20 MR. WAGNER:

Your Honor, could I approach the  
bench with Mr. Trafalski?

21

22

23

24

25

H. T. Noel & E. F. Knisley

OFFICIAL REPORTERS, U. S. DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK



2  
Suppression Hearing.

9

1 MR. WAGNER:

I wonder if I could hand the Court  
a brief trial memorandum?

2  
3 THE COURT:

Yes. If either side is going to  
have any request to charge in this case,  
I am going to have to have them the  
first thing in the morning.

4  
5  
6  
7 MR. WAGNER:

I will have mine by then.

8 THE COURT:

They don't have to be pretty, just  
the substance of what you want.

9  
10 MR. WAGNER:

Perhaps we could put on the record  
what we are doing as to the suppression  
hearing?

11  
12  
13 THE COURT:

Yes. This is a suppression hearing  
at the request of the defendant relative  
to the use of prior convictions of Mr.  
Miller if he takes the witness stand,  
and of the statements given by Mr.  
Miller, is that right?

14  
15  
16  
17  
18 MR. TRAFALSKI:

Yes, your Honor.

19 THE COURT:

All right.

20 MR. WAGNER:

Your Honor, for the Court's  
benefit, I intend to call two witnesses,  
Agent Thomas Langer who would be a  
witness in the trial, and Mr. Langer  
will testify about the arrest of the

21  
22  
23  
24  
25

## Testimony of Thomas Langer.

1 defendant, and Mr. John Gill, who was  
2 the principal agent in charge of taking  
3 the man's statement. I did not know that  
4 Mr. Trafalski intended to make this  
5 motion to suppress, so I don't have here  
6 every agent who was involved in the  
7 investigation of the case, but it is my  
8 opinion that Mr. Gill, who is the agent  
9 who handled the statement, he would be  
10 the obvious and the most logical agent  
11 to call at a suppression hearing.

12 THE COURT:

All right.

13 MR. WAGNER:

Mr. Langer.

14  
15 T H O M A S D. L A N G E R, 20 Fountain Parkway, Buffalo,  
16 New York, called as a witness on behalf of the Government, and  
17 being first duly sworn, testified as follows:

18  
19 DIRECT EXAMINATION BY MR. WAGNER:

20 Q Mr. Langer, I'd like you to tell the Judge what your  
21 occupation is?

22 A I'm a Special Agent with the Federal Bureau of  
23 Investigation.

24 Q Approximately, sir, how long have you been with the  
25 FBI?



## Testimony of Thomas Langer.

- 1 A Approximately two and a half years.
- 2 Q And you work out of the Buffalo Office?
- 3 A Yes, I do.
- 4 Q Can you describe what kind of an assignment you have,  
5 what kind of duties you do?
- 6 A I am currently working organized crime cases, and I  
7 investigate crimes which the Federal Government may be  
8 party, and gather evidence in those cases.
- 9 Q I take it, sir, you were working as an FBI Agent on  
10 July 31, 1975?
- 11 A Yes, I was.
- 12 Q Mr. Langer, to offer some preliminary questions to you,  
13 on that day you received a report concerning a robbery  
14 of the Marine Midland Bank at the Marine Midland Center  
15 in Buffalo, is that correct?
- 16 A Yes.
- 17 Q And I take it, sir, that you went to the vicinity of  
18 the bank at approximately 10:15 to 10:30 a.m., is that  
19 right?
- 20 A Yes, sir.
- 21 Q I would like you, if you would, to pick up with what  
22 happened when you were investigating that robbery or  
23 that alleged robbery in the vicinity of the bank,  
24 telling us where you were, who you were with, what  
25 you were doing?



## Testimony of Thomas Langer.

1 A Yes, sir. We arrived at the vicinity of the bank at  
2 approximately 10:15, 10:20. I was in an FBI car with  
3 two other agents; Special Agent Gill and Special Agent  
4 Sculimbrene.  
5 Q If you know, spell Agent Sculimbrene's name for the  
6 reporter?  
7 A S-c-u-l-i-m-b-r-e-n-e, I believe.  
8 Q Mr. Gill's name is spelled G-i-l-l?  
9 A Yes, sir. We were in the vicinity of the bank, and we  
10 heard over our radio, a general description of the  
11 individual who had robbed the bank. We also were  
12 advised at a later time that this individual was seen  
13 in the area of the General Donovan Building. We were  
14 down in that area and we met up with another agent who  
15 was in his own vehicle, that is, Special Agent Eidson,  
16 and Mr. Eidson advised myself and the other two agents  
17 that he had observed an individual who fit the general  
18 physical characteristics of the broadcast. This  
19 individual apparently, according to Mr. Eidson, had just  
20 come out of the General Donovan Building. At this time,  
21 we - - myself, Special Agent Gill and Special Agent  
22 Sculimbrene - - got out of our vehicle, and I called to  
23 Mr. Miller, who later, to me, was known as Mr. Miller,  
24 and I identified myself and asked Mr. Miller to stop.  
25 He then turned around and looked at me, at which time

## Testimony of Thomas Langer.

1 he took off in a full run away from me.

2 Q Mr. Langer, you use the name Miller. At the time, it

3 is correct that you did not know his name, is that

4 right?

5 A That is correct.

6 Q When you first saw him, can you tell us about how far

7 you were from where he was?

8 A Yes, sir, from the car to where I called to him, was

9 approximately one hundred feet.

10 Q All right. Now, when you were calling to him from the

11 car, the other agents were with you?

12 A Yes, they were out of the car at this time.

13 Q What other agents, specifically, were with you?

14 A Special Agent Gill had gotten out of the car, Special

15 Agent Sculimbrene got out of the car, Special Agent

16 Eidson remained in his own vehicle and he did not get

17 out.

18 Q So the record is clear, you and Mr. Gill and Mr.

19 Sculimbrene were all in the same car to begin with?

20 A Yes, sir.

21 Q Would you tell us, sir, as best you recall, what

22 happened after you yelled out? First of all, tell

23 us what you said to the man?

24 A I yelled to him that we were the FBI, and I asked him

25 to halt.



## Testimony of Thomas L. ... r.

1 Q Do you recall either of the other two agents; Mr.  
2 Gill or Mr. Sculimbrene, saying anything to him at that  
3 time?

4 A I believe Mr. Sculimbrene also had yelled something to  
5 the effect of halt or stop.

6 Q And would you tell us, sir, what this man did at that  
7 time when you yelled that out?

8 A He turned around and he looked at us and he saw the  
9 three of us standing there, at which time he broke into  
10 a full run away from us.

11 Q Can you tell us what you did, sir?

12 A We immediately pursued him on foot through a parking  
13 lot and into another vacant lot, and finally I caught  
14 up to him and stopped him.

15 Q When you followed him, were you running, walking or  
16 jogging?

17 A We were running at a fast pace.

18 Q Approximately what distance was it that you had to run  
19 before you actually caught up with this man?

20 A Approximately two and a half blocks.

21 Q And in what area of the city was this in at the time?

22 A This is - - it started off at - - the pursuit started  
23 off on Exchange Street and I believe it went up to  
24 Swan Street.

25 Q That is down in the vicinity of the bank that had been

## Testimony of Thomas Langer.

1 robbed?

2 A Yes, sir, approximately three blocks away.

3 Q When you got to the man, would you tell us what happened  
4 at that point, sir?

5 A Well, all through the pursuit, we had yelled at him,  
6 requested him to halt, and finally I was up to  
7 approximately six feet parallel to him, and I had my  
8 weapon drawn, and he apparently saw that I had my  
9 weapon drawn and he stopped at that time.

10 Q You say that he apparently saw it, did you see him  
11 turn and look at you?

12 A Yes.

13 Q When you say "We were running", who was running along  
14 with you?

15 A Special Agent Gill and Special Agent Sculimbrene were  
16 behind me.

17 Q Special Agent Eidson, who was in the area to begin with,  
18 remained at his car?

19 A Yes, sir.

20 Q Mr. Eidson is a much older agent, is that right?

21 A Yes, sir.

22 Q Now, when you got up near this man and had your gun  
23 withdrawn, what happened then?

24 A Well, I advised him to stop and freeze, and I advised  
25 him to put his hands on his head. He, at this time,



## Testimony of Thomas Langer

1 did this.

2 Q Now, I take it, sir, that you had received, in the  
3 ordinary course of the radio transmission, a report  
4 of the robbery, is that right?

5 A Yes.

6 Q You were given details of the robbery?

7 A Yes.

8 Q Can you tell us what you did after you stopped this  
9 man?

10 A Well, this man had in his hand a bag which I asked him  
11 to drop, he didn't do it, so then I grabbed the bag  
12 from him and then the other agents, Agent Gill and  
13 Agent Sculimbrene, commenced to frisk him for a weapon.

14 Q Did you have any reason, sir, to suspect that there was  
15 a weapon on him or a weapon used in the robbery?

16 A Yes, sir.

17 Q Why was that?

18 A It had been broadcast over our radio that the individual  
19 who had robbed the bank had used or exhibited a weapon  
20 at that time.

21 Q Would you tell us what else you did, what else you found  
22 at that time?

23 A I took the bag, and I looked into the bag, and I found  
24 various items, such as a replica of a .38 Colt revolver,  
25 I found approximately \$1943 in American currency, and

## Testimony of Thomas Langer.

1 I found a knife with approximately a five and a half  
2 inch blade, I found a pair of sunglasses and a pair of  
3 plain work glasses, safety glasses, and I found articles  
4 of clothing, such as a sport coat or a suit coat, a  
5 blue hat, a green shirt, and a knife case, a Marine  
6 Midland white bag, and I believe that was all that was  
7 in the bag.

8 Q Can you tell us, sir, what color the bag was that the  
9 man was carrying?

10 A The outside bag was green and blue in color.

11 Q Do you know anything about that bag, any further descrip-  
12 tion or further markings on it?

13 A I believe that bag has my initials on it now.

14 Q I mean at the time, anything else about the bag?

15 A No.

16 Q Can you recall if it was a paper bag or a cloth bag?

17 A Cloth bag.

18 Q These items were all in that bag?

19 A Yes.

20 Q When you saw what you described as a replica of a hand-  
21 gun, did you know it was a replica at the time?

22 A No, sir.

23 Q Perhaps you could explain to the Judge what the gun  
24 was like, why you later determined it to be a replica?

25 A The gun is a very authentic looking weapon, and at the



## Testimony of Thomas Langer.

1 time we had stopped him, we thought it was a real  
2 .38 Colt, and we got back to our office and we were  
3 going to examine it for a serial number to determine  
4 whether the weapon was stolen, and only at that time  
5 did we, in fact, find out it was not a real .38 Colt  
6 weapon.

7 Q Now, going back to when you apprehended this man and  
8 looked in the bag, what did you do after that, sir?

9 A I took the bag and all its contents and I returned  
10 it to the bank.

11 Q Were the other agents with you when you actually  
12 apprehended this man?

13 A They were within thirty feet. I would guess.

14 Q That was Mr. Gill and Mr. Sculimbrene?

15 A Yes.

16 Q I take it they arrived where you were with the subject  
17 shortly after you grabbed him?

18 A Yes.

19 Q Seconds after that?

20 A Yes.

21 Q What did they do, if you know?

22 A The only thing I know is that they searched him for  
23 weapons, and other than that, I really don't know.

24 Q Did they take custody of him?

25 A Yes.

## Testimony of Thomas Langer.

1 Q Do you know where they went with him?

2 A Returned to the bank.

3 Q What did you do? You came back to the bank?

4 A Yes.

5 Q How did you get back to the bank?

6 A I drove the car that we originally came in, I drove  
7 that alone.

8 Q That was your involvement with this man at that time?

9 A Yes, sir.

10 Q Back at the office later on, Mr. Langer, the man was  
11 interviewed, is that right?

12 A Yes.

13 Q Were you there when the interview took place?

14 A I was. I believe I went into the interview room once  
15 or twice, one or two occasions for a half minute or  
16 so.

17 Q You had no formal dealings with the interview process?

18 A No, sir.

19 MR. WAGNER: I have no further questions for  
20 Mr. Langer, your Honor.

21  
22 CROSS EXAMINATION BY MR. TRAFALSKI:

23 Q Mr. Langer, when you first saw the defendant, how far  
24 away were you from him?

25 A You mean when we were in the car?



## Testimony of Thomas Langer.

- 1 Q Right.
- 2 A I would guess that when I first noticed him, it was
- 3 probably one hundred fifty feet, two hundred feet.
- 4 Q Was he walking at that time?
- 5 A He was walking.
- 6 Q When you finally got up to him, you called to him to
- 7 have him stop, is that correct?
- 8 A Yes.
- 9 Q How far away were you from him then?
- 10 A At the final stage?
- 11 Q Yes.
- 12 A Approximately six feet when I finally stopped him.
- 13 Q Did you handcuff him?
- 14 A No, sir, I did not.
- 15 Q Who did?
- 16 A I don't know which agent did.
- 17 Q Did you take custody of him at any time?
- 18 A Well, he was in my custody when I stopped him.
- 19 Q You grabbed onto him in some fashion?
- 20 A I didn't physically touch him myself, no, I stood in
- 21 front of him.
- 22 Q How far away?
- 23 A I would guess two or three feet.
- 24 Q Did you notice anything unusual about him?
- 25 A No, sir.

## Testimony of Thomas Langer.

1 Q Did he have an odor of alcohol on his breath?  
2 A No, sir, he didn't.  
3 Q Did he act intoxicated?  
4 A No, sir.  
5 Q You received this radio call immediately after the  
6 alleged robbery, is that correct?  
7 A Yes, sir.  
8 Q You were cruising in the area?  
9 A No, sir, we were in the office when they announced the  
10 bank had been robbed, we responded from the office.  
11 Q It is your testimony here that there was no odor of  
12 alcohol on his breath?  
13 A I didn't detect any odor, no, sir.  
14 Q How about his actions, was he nervous?  
15 A He was a little nervous, he was not extremely nervous.  
16 Q Was he stuttering?  
17 A No, sir.  
18 Q Was he crying?  
19 A No, sir.  
20 Q He was perfectly normal, in your opinion?  
21 A Yes, sir, in my opinion, he was.  
22 MR. TRAFALSKY: I have no further questions.  
23 MR. WAGNER: Your Honor, I should have asked  
24 one question. I would like the Court's  
25 permission to do so.



## Testimony of John Gill.

1 THE COURT: Yes.

3 REDIRECT EXAMINATION BY MR. WAGNER:

4 Q Do you see the man in the courtroom today that we  
5 have been talking about?

6 A Yes, sir.

7 Q Would you point him out for us?

8 A The gentleman sitting right over there at the table  
9 with defense counsel.

10 Q Mr. Trafalski?

11 A Yes.

12 MR. WAGNER: Let the record reflect that that is  
13 the defendant in this case, Alfred  
14 Miller. Nothing else. Thank you.

5 THE COURT: Anything further?

16 MR. TRAFALSKI: Nothing of this witness.

17 THE COURT: All right, thank you.

18 (Witness excused.)

19  
20 \* \* \* \* \*

21  
22 J O H N E. G I L L, J R., 109 Creekside Drive,  
23 Tonawanda, New York, called as a witness on behalf of the  
24 Government, and being first duly sworn, testified as follows:  
25

## Testimony of John Gill.

1 DIRECT EXAMINATION BY MR. WAGNER:

2 Q Mr. Gill, I would like you, sir, to tell the Judge  
3 what your occupation is, please?

4 A Special Agent of the FBI.

5 Q Approximately, sir, how long have you been with the  
6 FBI?

7 A Three years.

8 Q And what type of assignment, what type of duties do  
9 you presently have?

10 A Investigating violation of the United States Law.

11 Q Were you working, sir, in that capacity on July 31,  
12 1975?

13 A Yes, sir, I was.

14 Q And I take it, sir, that you had occasion that day to  
15 respond to a bank robbery alarm at the Marine Midland  
16 at Main and Seneca Streets in Buffalo?

17 A Yes, I did.

18 Q Mr. Langer earlier testified that you and he and  
19 Agent Sculimbrene were together in an official  
20 Government vehicle, is that right?

21 A That is correct.

22 Q And you went to the area of the bank, is that correct?

23 A That is correct.

24 Q I would like you to pick up at about that time that  
25 you got there, what did you do, you and Mr. Langer and



## Testimony of John Gill.

1 Mr. Sculimbrene?

2 A At approximately 10:25 or 10:30 on that morning, we  
3 were in the car, I was driving approximately one block  
4 east of the bank, and we were advised by Special Agent  
5 Eidson that a man meeting the description we have of  
6 the bank robber was across the street. At that time,  
7 I stopped the car, Mr. Langer got out and identified  
8 himself, called to the man to halt, and at that time,  
9 this individual turned and started to run north through  
10 a parking lot in that vicinity.

11 Q Mr. Gill, I take it a description had been given to  
12 you, generally, of the robber?

13 A Yes.

14 Q You saw this individual?

15 A Yes, sir, I did.

16 Q Did he generally fit the description that had been  
17 given to you?

18 A Yes, he did.

19 Q Could you tell us, as best you recall, what the  
20 description was that had been broadcast, and tell us  
21 what the man looked like, as best you recall?

22 A As best I recall, we had a description of a negro male,  
23 about five feet eleven, medium build, wearing dark  
24 pants, and that is about all I remember of the  
25 description.

## Testimony of John Gill.

- 1 Q How did this gentleman appear to you when you observed  
2 him?
- 3 A He fit that description.
- 4 Q Can you tell us how he looked, height, build, et cetera?
- 5 A Height, five feet ten or eleven, and medium build.
- 6 Q Negro male?
- 7 A Negro male.
- 8 Q Do you see that man in the courtroom that you observed  
9 that day in the street?
- 10 A Yes, I do.
- 11 Q Would you point him out for us?
- 12 A Sitting right over there, Mr. Miller.
- 13 Q That is the defendant in this case, Mr. Alfred Miller.  
14 Mr. Gill, I would like to have you pick up from what  
15 happened when you got to that area, what did you do  
16 after that?
- 17 A At the time Mr. Miller began to run, Mr. Langer went  
18 after him, I got out of the car and followed, and we  
19 went approximately two blocks and at that time - -  
20 during that time, our calling him to stop, and he  
21 eventually did, with Mr. Langer confronting him.
- 22 Q When you say "We were running, we were pursuing," who  
23 was that?
- 24 A "We" is myself and Mr. Langer and Mr. Sculimbrene.
- 25 Q Would you tell us, sir, whether you were walking after



## Testimony of John Gill.

- 1 him or running or - -
- 2 A No, we were running fast after him, it was a full run.
- 3 Q About how far a distance was it before you actually
- 4 caught him?
- 5 A Approximately two blocks.
- 6 Q I would like you to tell us what happened after you
- 7 got to the area where you say you caught this man?
- 8 A Well, when he stopped, Mr. Langer was in front of him,
- 9 he was carrying a bag at that time, and Mr. Langer
- 10 ordered him to drop the bag, and he hesitated for a
- 11 while, didn't drop the bag, and as we came closer, we
- 12 put the handcuffs on him and Mr. Langer took the bag
- 13 away.
- 14 Q Mr. Langer took the bag out of his hand?
- 15 A Yes, sir, I believe so.
- 16 Q Mr. Langer testified that he looked into the bag, is
- 17 that your recollection?
- 18 A Yes, sir.
- 19 Q Would you tell us what else you did, sir?
- 20 A I assisted in handcuffing the defendant, and then Mr.
- 21 Eidson pulled up, and I opened the door on Mr. Eidson's
- 22 car and we got in the back seat with the defendant.
- 23 Q So our record is clear, Mr. Eidson is a fellow FBI
- 24 Agent who was in the vicinity of you when you left your
- 25 car on this chase?

## Testimony of John Gill.

1 A Yes, sir.

2 Q Mr. Eidson had driven to you about the two blocks?

3 A Right.

4 Q You said you assisted putting handcuffs on him, who  
5 assisted you with that?

6 A Sculimbrene.

7 Q He is also an agent?

8 A Yes, sir, he is.

9 Q What did you do after you put this fellow in the car?

10 A Once we got in the car, we drove approximately two  
11 blocks back to the bank.

12 Q That took, I take it, a few minutes?

13 A Yes.

14 Q Less than a minute, perhaps?

15 A Possibly.

16 Q Did you have any conversation with this man either  
17 when you first met him or during the ride back to the  
18 bank?

19 A On the ride back, there was no discussion at all,  
20 as I remember. When he stopped the car at the bank,  
21 I read the defendant the contents of a form,  
22 Interrogation-Advice of Rights.

23 Q You had that form with you, sir?

24 A Yes, I did.

25 Q This took place in the automobile?



## Testimony of John Gill.

1 A. Yes, it did.

2 Q. Tell us, as best you recall, exactly what you did, what  
3 Mr. Miller did, if anything?

4 A. I took the form out of my pocket and I read him the  
5 contents of it, and then we - - I gave the form to Mr.  
6 Miller and he appeared to read it over. I asked if  
7 he would sign the form and he agreed at the time, he  
8 signed it.

9 Q. Showing you, Mr. Gill, what has been marked as Government  
10 Exhibit 4 for identification, I will ask you to look  
11 at that, sir, and if you could identify that for us,  
12 would you please do so?

13 A. Yes, this is the same form.

14 Q. How do you know it is the same form that you used that  
15 day?

16 A. I signed and dated it on that day.

17 Q. Is that your signature on it?

18 A. Yes.

19 Q. Would you tell us what Mr. Miller did after he signed  
20 it? Did you have any discussion with him about the  
21 form?

22 A. No, there was no discussion after that.

23 Q. Did you - - before he signed - - did you ask him  
24 anything about the form?

25 A. We asked him if he understood his rights as set forth

## Testimony of John Gill.

1 and he said he did.

2 Q Do you recall what words he used or your best recollec-  
3 tion of what his words were?

4 A My best recollection was that he said that he under-  
5 stood his rights and was willing to talk at that time.

6 Q That is his signature on the form?

7 A Yes, sir, it is.

8 Q Were you right there when he signed it?

9 A Yes, I was.

10 Q That was where?

11 A That was in the back seat of the car.

12 Q How did Mr. Miller sign the paper in the car, did he  
13 have something to rest it on?

14 A As I remember, we placed the paper on the back of the  
15 front seat and signed it there.

16 Q Was Mr. Miller sitting in the front or back seat at  
17 the time?

18 A He was in the center of the rear seat.

19 Q You were in the rear seat also?

20 A Yes, sir.

21 Q And who else?

22 A Mr. Sculimbrense.

23 Q After Mr. Miller signed the form and indicated to  
24 you that he understood it, did you have any conversation  
25 with him at that time?



1 A. No, we did not.

2 Q. Tell us what you did with him after that?

3 A. At that time, we left the car and went back into the  
4 bank so the bank employees might view Mr. Miller for  
5 identification purposes.

6 Q. You were present with Mr. Miller in the bank?

7 A. Yes.

8 Q. I take it, sir, that - - that was approximately how  
9 long a time that you were in the bank?

10 A. Approximately five minutes.

11 Q. For the purpose of having tellers and others view the  
12 defendant?

13 A. Yes, sir.

14 Q. What did you do after that, sir?

15 A. We got back into the car at that time and proceeded  
16 to the Buffalo Office of the FBI.

17 Q. Again, when you say "we," Mr. Miller, yourself and  
18 anyone else?

19 A. Mr. Sculimbrene and Mr. Eidson.

20 Q. About what time was it when you got back to the Buffalo  
21 Office of the FBI, if you recall?

22 A. Approximately ten minutes after leaving the bank.

23 Q. That would be about what time?

24 A. I would say approximately 10:45.

25 Q. Somewhere in that area?

## Testimony of John Gill.

1 A Right.

2 Q Tell us what happened when you got back to the FBI  
3 Office?

4 A When we got back to the FBI office we again - - myself,  
5 Eidson, Sculimbrene and Miller - - went to the  
6 interview room and we sat down and, again, we briefly  
7 mentioned his rights, we didn't go through it all again,  
8 but - -

9 Q You alluded to the form that he had signed?

10 A Yes.

11 MR. TRAFALSKI: ~~Your Honor, I object to this.~~ I  
12 don't know, from his testimony, who said  
13 what. He keeps using "we".

14 THE COURT: To the extent you can, Mr. Gill,  
15 say what you said and what the defendant  
16 said and what anyone said.

17 THE WITNESS: Yes, sir. As I recall, I was still  
18 in possession of the form, and when we  
19 got back to our office, I still had the  
20 form, and I said something to the effect  
21 that you have the right to remain  
22 silent.

23 BY MR. WAGNER:

24 Q Did you go through any of the other rights back at the  
25



## Testimony of John Gill.

1 office?

2 A No, not that I recall, it was very brief.

3 Q Do you recall making a mention of the form that he had

4 signed?

5 A Yes.

6 Q Did you have that form in Mr. Miller's presence at

7 that time?

8 A Yes, sir.

9 Q Did he have access to it at that time, could he see

10 it or look at it?

11 A I'm sure he could see it. I don't recall if we gave it

12 to him or not.

13 Q What did you do after that?

14 A Sat down and talked about the bank robbery.

15 Q This took place in the interview room at the FBI office?

16 A Right.

17 Q Who was present in the room other than you and Mr.

18 Miller during this conversation with him?

19 Mr. Sculimbrene and Mr. Eidson.

20 Q The same three fellows?

21 A Yes, sir.

22 Q I would like you to tell the Court what the process was,

23 what the method was of conversing with Mr. Miller, and

24 I am asking you did he give a narrative or did you ask

25 him questions individually or in a group?

## Testimony of John Gill.

1 A As I remember, the questions were asked by myself and  
2 Mr. Eidson and Mr. Sculimbrene, and Mr. Miller would  
3 answer.

4 Q Do you recall the substance of the questions that he  
5 responded to?

6 A If, in fact, he robbed the bank.

7 Q How did Mr. Miller respond, did he give you answers to  
8 those questions?

9 A Yes, sir, he did.

10 Q And about how long was it that this oral conversation  
11 took place?

12 A Approximately fifteen minutes, ten, fifteen minutes.

13 Q During that time, did anyone else come into the interview  
14 room?

15 A Not that I recall.

16 Q During that time, did Mr. Miller at all indicate to  
17 you that he wanted a lawyer present with him?

18 A No, he did not.

19 Q Did he ever ask you to read or explain his rights to  
20 him?

21 A No.

22 Q Did he ever indicate to you that he had any questions  
23 concerning the rights that you had advised him of?

24 A No.

25 Q Did he ever indicate to you or ask you or tell you that



## Testimony of John Gill.

- 1 he would like the questioning or the conversation to  
2 stop?
- 3 A. No, he did not.
- 4 Q. Did he ever indicate to you at all, in any way, that he  
5 didn't understand what you had said to him or that he  
6 didn't understand what was going on?
- 7 A. No, he didn't.
- 8 Q. Can you tell me how it was that Mr. Miller answered,  
9 how was his demeanor?
- 10 A. His demeanor was normal, he seemed to understand what  
11 was going on and- -
- 12 Q. How about his language, his voice, his ability to  
13 understand your questions, as far as you can tell?
- 14 A. Appeared normal.
- 15 Q. Did you smell alcohol on Mr. Miller's breath?
- 16 A. No.
- 17 Q. Would you tell us, as best you recall what it was that  
18 Mr. Miller told you?
- 19 A. As I remember, essentially, "You caught me, I might as  
20 well tell you the truth."
- 21 Q. Did he proceed to tell you the facts about the robbery,  
22 about himself?
- 23 A. Yes, he did.
- 24 Q. As best you recall, what oral comments did he make to  
25 you? I realize that there was a subsequent written

## Testimony of John Gill.

1 statement taken, but I would like you to tell the  
2 Court - -

3 THE COURT: Why do we need to go into what was  
4 said?

5 MR. WAGNER: I suppose we don't, your Honor.  
6 In fact, I will withdraw the question.  
7

8 BY MR. WAGNER:

9 Q Mr. Gill, did there come a time after that that a  
10 written statement was prepared?

11 A Yes, sir.

12 Q Would you tell the Court what the procedure was for  
13 doing that?

14 A As I remember, Mr. Eidson called a stenographer to  
15 come into the room, and Mr. Eidson dictated the state-  
16 ment to the stenographer.

17 Q Was Mr. Miller present when Mr. Eidson did that?

18 A Yes, he was.

19 Q How did Mr. Eidson go about giving facts to the  
20 stenographer, as best you recall?

21 A Mr. Eidson took the facts that were supplied us by  
22 Mr. Miller and dictated to the stenographer those  
23 same facts.

24 Q Do you know if you or Mr. Sculimbrene or Mr. Eidson  
25 conferred with Mr. Miller in any way while this



## Testimony of John Gill.

1 dictation was going on?

2 A Yes. He was present when it was being dictated and, as

3 I remember, Mr. Eidson told him if anything was wrong

4 to let him know now before it was typed.

5 Q Do you recall whether or not Mr. Miller responded in

6 any way to Mr. Eidson's comment?

7 A He acknowledged the comment, I don't recall he made any

8 changes on the statement.

9 Q Then, sir, after the comments were dictated by Mr.

10 Eidson to the stenographer, what happened after that?

11 A The stenographer left to type the statement and, as I

12 remember, we took - - myself and Sculimbrene took Mr.

13 Miller next door to the fingerprint room and finger-

14 printed and photographed him.

15 Q About how long did that fingerprinting and photographing

16 take?

17 A Approximately ten minutes.

18 Q What happened after that?

19 A After that, we returned to the interview room. As I

20 remember, the statement had been typed, it was ready.

21 Q I will show you what has been marked as Government's

22 Exhibit 3 for identification, which is a two-page docu-

23 ment, and I will ask you to look at that, sir, and if

24 you recognize it, I would like you to tell us what that

25 is, please?

## Testimony of John Gill.

1 A This is the statement that Mr. Eidson dictated on that  
2 day.

3 Q How can you tell that is the same one, sir?

4 A I signed it and dated it.

5 THE COURT: What number is this?

6 MR. WAGNER: Government's Exhibit 3 for identi-  
7 fication.

8 BY MR. WAGNER:

9 Q Mr. Gill, would you tell us what you did when you re-  
10 turned to the interview room and found that statement  
11 already prepared?

12 A Mr. Eidson read it over to assure correctness, as I  
13 remember, and he gave it to Mr. Miller to read himself.

14 Q Do you recall whether or not Mr. Miller read it or  
15 appeared to read it?

16 A Yes, he did appear to read it.

17 Q Do you recall whether or not Mr. Miller was offered the  
18 opportunity to correct the statement?

19 A Yes, he was.

20 Q Who said that, as best you recall, what was said?

21 A As I recall, Mr. Eidson advised him that if there were  
22 any changes to be made or anything was wrong, we would  
23 change it.

24 Q Do you recall what Mr. Miller did, if anything?

25 A He agreed to the statement. He said that was the truth



## Testimony of John Gill.

- 1 and then he signed it.
- 2 Q And then you witnessed his signature?
- 3 A Yes, I did.
- 4 Q After that, Mr. Gill, do you recall what was done with
- 5 Mr. Miller after he signed the statement?
- 6 A After he signed the statement, I believe we talked
- 7 some more on another matter.
- 8 Q That involved matters not relating to this particular
- 9 charge, is that right?
- 10 A That is right.
- 11 Q Mr. Miller provided you with additional information
- 12 about other matters?
- 13 A Yes, he did.
- 14 Q After that, sir, can you tell us what you did?
- 15 A After that, we transported Mr. Miller to the Erie
- 16 County Holding Center.

17 MR. WAGNER: I have no further questions for

18 Mr. Gill. Thank you.

## CROSS EXAMINATION BY MR. TRAFALSKI:

- 20 Q Now, Exhibit Number 4, Government's Exhibit Number 4,
- 21 you read this to Mr. Miller, is that correct?
- 22 A Yes, sir, I did.
- 23 Q You explained each and every sentence on this to him?
- 24 A I read the statement verbatim.
- 25

## Testimony of John Gill.

- 1 Q And did you explain the rights to him?
- 2 A No, I read the statement to him, I asked him if he
- 3 understood the statement as read.
- 4 Q What did he say?
- 5 A He said he did.
- 6 Q Now, as I understand it, this is basically not Mr.
- 7 Miller's statement, this statement was dictated by an
- 8 agent, is that correct?
- 9 A Yes, sir, that was dictated by Mr. Eidson.
- 10 Q Then it was given to Mr. Miller to read, is that correct?
- 11 A Yes, sir, after it was typed up, it was provided to Mr.
- 12 Miller to verify.
- 13 Q These are not Mr. Miller's words or anything that has
- 14 to do with Mr. Miller?
- 15 A It was taken from the facts supplied by Mr. Miller and
- 16 dictated by Mr. Eidson.
- 17 Q This one fact in the statement he okayed, a .45 caliber
- 18 pistol was a fact obtained from - -
- 19 A Yes, from Mr. Miller.
- 20 Q Actually, it's a .32 caliber - - a .38 caliber pistol,
- 21 is that correct?
- 22 A I believe so. I haven't seen that in a while.
- 23 Q Now, to get this straight in my mind, this statement
- 24 again was dictated by Agent - -
- 25 A Eidson.



## Testimony of John Gill.

1 Q - - Eidson?

2 A Right.

3 Q And then given to Mr. Miller. Was it read to him?

4 A I don't recall if it was read to him or not. I remember  
5 it being given to him, I don't recall if it was read.

6 Q Well then, we don't know if he understood this state-  
7 ment, is that correct?

8 A He told us he understood it.

9 Q You don't know if he read it?

10 A He appeared to read it.

11 Q He looked at it?

12 A Yes, he did.

13 Q When you first saw Mr. Miller, you were approximately  
14 one hundred fifty feet away from him?

15 A Approximately one hundred.

16 Q What other description did you get of the alleged  
17 robber, what other description did you get on the  
18 radio?

19 A As I recall, it was what I mentioned before, height,  
20 weight, negro male, and I recall dark pants. I believe  
21 he was wearing a jacket, a grey jacket is the descrip-  
22 tion we had.

23 Q When you stopped the defendant, he was so attired,  
24 is that correct?

25 A Except for the jacket. As I remember, he was wearing

## Testimony of John Gill.

1 a white shirt when we stopped him.

2 Q Wher you stopped him, how close did you get to him?

3 A At which time?

4 Q Did you handcuff him?

5 A Yes, I did.

6 Q Approximately how close were you to him?

7 A I was right next to him.

8 Q Did you smell anything on his breath?

9 A No, I didn't.

10 Q Did he appear to be intoxicated?

11 A No.

12 Q Was ne entirely cooperative with you?

13 A After that point, when we were - - after we had gotten

14 back into the car and everything had calmed down, yes,

15 he was.

16 Q He did everything you asked him to?

17 A Essentially.

18 Q What do you mean "essentially"?

19 A Well, he gave us no problem once we were back in the

20 car.

21 Q He voluntarily signed every statement you gave him,

22 he voluntarily signed the Interrogation-Advice of Rights?

23 A Yes, he did.

24 Q Also, all other matters you talked to him about, he

25 cooperated fully, is that correct?



## Testimony of John Gill.

- 1 A. That is right.
- 2 Q. At any time, did you or another agent present in the  
3 room tell Mr. Miller that if he did cooperate with you,  
4 things may go easier for him?
- 5 A. As I remember, I never made a statement to that effect.  
6 I don't recall the statement being made in those words.
- 7 Q. You don't?
- 8 A. I don't recall a statement being made in those words,  
9 you know, that it would go easier on him.
- 10 Q. Was it that it would be easier for him if he would  
11 cooperate?
- 12 A. I remember it was said in the room, I don't recall who  
13 said it, that we would appreciate it if he cooperated,  
14 it would be easier on everybody.
- 15 Q. Including Mr. Miller?
- 16 A. I guess so.
- 17 Q. And after you said that, did he give the statement,  
18 or after someone said that?
- 19 A. I don't recall when it was said. I remember words  
20 to that effect being mentioned. I assume it was before,  
21 yes.
- 22 Q. Because then he did give the statement, is that correct?
- 23 A. Right. We solicited his cooperation.
- 24 Q. Did you show him pictures of other people, mug shots,  
25 and ask him to identify a few other people?

## Testimony of John Gill.

1 A. Not at that time. I think later on that was done,  
2 yes.

3 Q. Did you, at that time, also tell him that if he would  
4 cooperate with your office, things would be easier for  
5 him, or maybe he would get a better deal or anything  
6 like that?

7 THE COURT: All we are concerned with is the  
8 statement.

9 MR. TRAFALSKI: I want to establish a pattern of  
10 what the defendant was thinking when he  
11 gave all these statements.

12 THE COURT: Well, I think if you could show  
13 there was any allusion to the other  
14 matters prior to the giving of these  
15 oral statements and the signing of this  
16 written statement, it would be pertinent,  
17 otherwise not.

18 BY MR. TRAFALSKI:

19 Q. Did you show him any mug shots of anyone else prior  
20 to him giving this statement?

21 A. No, we didn't.

22 Q. I assume you asked him, of course, if someone else was  
23 involved in the robbery?

24 A. I don't recall asking him that, it is very possible.  
25



## Testimony of John Gill.

1 Q But you do recall a statement being made that it would  
2 be easier on everyone, including Mr. Miller, if he would  
3 cooperate?

4 A Essentially, we solicited his cooperation. When we  
5 got into the room, we asked him if he would cooperate,  
6 he agreed.

7 Q Getting back to that question again, I hate to go over  
8 it, but you do recall something about "it would be  
9 easier for everybody if you would cooperate."?

10 A Yes.

11 MR. TRAFALSKI: I have no further questions, your  
12 Honor.

13 THE COURT: Mr. Wagner?

14 MR. WAGNER: Nothing else, your Honor.

15 THE COURT: Did you say nothing?

16 MR. WAGNER: Nothing else, your Honor.

17 THE COURT: Thank you.

18  
19 (Witness excused.)

20  
21 MR. WAGNER: Your Honor, Mr. Trafalski indicated  
22 that he wished to suppress the statement  
23 given by the defendant, and at this  
24 time I have no further witnesses, unless ✓  
25 Mr. Trafalski has any requests that he

## Testimony of John Gill.

would like to make, we would attempt to accommodate him.

MR. TRAFALSKI:

No, your Honor, I don't have any requests relative to this. However, I move that the statement be excluded from admission into evidence based on the testimony of the individual who took the statement. The basis for that is simply, your Honor, that, one, the statement was dictated by an agent, typed by a stenographer, and then given to Mr. Miller. There is no testimony of any reading of the statement to him. If the Court looks at the wording in the statement, it will see it is not the wording that would be used by this defendant. The second ground for asking for its exclusion, your Honor, is the fact that there is an attempt by the agent to solicit cooperation in solving this crime from the defendant by promising or telling him it may go easier for him if he did cooperate. Because of that, your Honor, I believe that the statement given by Mr. Miller should not be used in this



mony of John Gill.

trial.

1  
2 THE COURT:

Mr. Wagner?

3 MR. WAGNER:

4 Your Honor, I would disagree with  
5 Mr. Trafalski. The defendant was  
6 obviously advised of his rights. He  
7 was read the form, he was given it to  
8 read, and he indicated shortly after  
9 10:30 that he understood his rights,  
10 that he was willing to give a statement  
11 to the agents, which indicates that he  
12 had been properly advised and voluntar-  
13 ily consented which, as you know, is  
14 the test. The fact that the statement  
15 that he actually signed was given to the  
16 stenographer by Mr. Eidson doesn't  
17 render it ineffective. The fact is  
18 obviously that Mr. Eidson and Mr.  
19 Sculimbrene and Mr. Gill conversed with  
20 the defendant generally and elicited  
21 facts from him, and Agent Gill's  
22 testimony was that the statement was  
23 obviously in Mr. Eidson's words but was  
24 derived from facts given by the defend-  
25 ant, that the statement was then given  
to Mr. Miller, and he was given an

## Testimony of John Gill.

1 opportunity to read it. He was also,  
2 as a matter of fact, given an oppor-  
3 tunity to object to Mr. Eidson's dicta-  
4 tion of it. He read it over and  
5 indicated it was true and signed it.  
6 He also, of course, gave oral statements  
7 to the agents, which we would urge would  
8 be admissible also. For these reasons,  
9 I feel the statement he gave was  
10 voluntary.

11 THE COURT:

What about the claimed promise of  
leniency?

12  
13 MR. WAGNER:

I believe that Agent Gill testified  
14 that after the statement was given, they  
15 talked to Mr. Miller about other matters.  
16 For the record, that was matters not  
17 relating to the robbery, but about other  
18 possible crimes that Mr. Miller may have  
19 knowledge of. So, first of all, that  
20 statement came after he had given the  
21 statement, could not possibly have any  
22 effect on this particular statement.

23 THE COURT:

Mr. Gill's testimony was that some-  
24 one in the room prior to the time when  
25 Mr. Miller gave the statement, the oral



## Testimony of John Gill.

1 statement about these events, someone  
2 said it would be easier on everybody if  
3 he cooperated.

4 MR. WAGNER:

I think that is true. I think that  
5 it is easier on him. I don't think that  
6 is coercion. I don't believe the  
7 agent's comments went to the point which  
8 would render an innocent man to falsely  
9 give a statement to protect himself.  
10 I feel the statement that he gave was  
11 voluntary. Mr. Miller, we should  
12 remember, was confronted by the agents,  
13 obviously, with very strong incriminat-  
14 ing facts. He must have known that they  
15 had strong incriminating facts, that  
16 he was caught shortly after the robbery.  
17 I feel those statements by the agents,  
18 their comments to him, would in no way  
19 push his statement into the realm of  
20 being coerced or involuntary.

21 THE COURT:

All right. What about the Sandoval  
22 hearing, what convictions are you in-  
23 tending to use?

24 MR. WAGNER:

Your Honor, I have received  
25 certified copies of two convictions.

## Testimony of John Gill.

1 One of them is over ten years old. I  
2 realize the new rules of evidence frown  
3 on the use of old statements - - I'm  
4 sorry - - old convictions, and I would  
5 - -

6 THE COURT: Isn't there a notice requirement?

7 MR. WAGNER: There is. I'm not sure that Mr.  
8 Trafalski will accept the fact that we  
9 have discussed this earlier.

10 MR. TRAFALSKI: We have, your Honor.

11 MR. WAGNER: I didn't mention it to him.

12 THE COURT: As of when?

13 MR. WAGNER: It would have been several weeks  
14 ago, your Honor.

15 MR. TRAFALSKI: At least that.

16 MR. WAGNER: Perhaps several months. As a matter  
17 of fact, I believe, your Honor, when Mr.  
18 Trafalski was first assigned to the case,  
19 he came to my office and discussed it.  
20 I believe we discussed at that time  
21 this problem. I believe Mr. Trafalski  
22 was shown his arrest record. I recall  
23 him reviewing most of the evidence we  
24 had at the time, and we also discussed  
25 Mr. Miller's alleged involvement in other





## Testimony of John Gill.

1 PROCEEDINGS RESUMED, PURSUANT TO RECESS, COMMENCING AT 1:00 P.M.

2

3

(Defendant present, counsel present,

4

jury absent.)

5

6 THE COURT:

All right. Mr. Trafalski, Mr.

7

Wagner, Mr. Miller, I am denying the

8

defendant's motion to suppress the

9

statements given, the oral statements

10

and written statement given by the

11

defendant, I am denying that motion.

12

I am granting the motion to suppress the

13

use of the two convictions if the

14

defendant takes the stand.

15

MR. TRAFALSKI:

Thank you, your Honor.

16

MR. WAGNER:

Can I ask your Honor to explain the

17

reason for denying the use of the latest

18

conviction?

19

THE COURT:

The reason is, and I have got into

20

it fairly much at length in another

21

recent case where we had a narcotics

22

indictment and there was an indicated

23

use of an earlier narcotics conviction,

24

and by looking at the Second Circuit

25

Court of Appeal's decision in United

\* \* \*

H. T. Noel & E. F. Knisley

OFFICIAL REPORTERS, U. S. DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK



## Testimony of John Gill.

1 approximately 3:00.

2 THE COURT: He may not be out of order.

3 MR. WAGNER: Fine. I think we may be done by

4 3:00.

5 MR. TRAFALSKI: I would like about fifteen minutes

6 to talk to him before he takes the witness

7 stand.

8 THE COURT: Well, all right, I will give you

9 some time, but you may have to condense

10 it a bit.

11 MR. WAGNER: I would like to put on the record

12 that Mr. Trafalski has been given the

13 3500 material relating to all of the

14 witnesses, including some we are not

15 going to call, and also, Mr. Robert

16 Shaw, Special Agent with the FBI, is

17 in court, he is the case agent, and his

18 function will be to provide some assist-

19 ance with documents or witnesses if

20 need be.

21 THE COURT: Is he going to be a witness?

22 MR. WAGNER: The only thing he would testify

23 to is possibly some of the exhibits

24 being brought over from the office. Mr.

25 Trafalski has consented to not raise

\* \* \*

H. T. Noel &amp; E. F. Knisley

OFFICIAL REPORTERS, U. S. DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

45.

## Testimony of Karen Rice.

1                   Trafalski as well as you have to me.

2                   I thank you very much.

3 THE COURT:                   Mr. Trafalski.

4 MR. TRAFALSKI:               Your Honor, I reserve my opening  
5                   until later.

6 THE COURT:                   All right. Proceed, Mr. Wagner.

7 MR. WAGNER:                 Miss Rice.

8  
9 K A R E N   H.   R I C E, 6873 Chaffee Court, Derby, New York,  
10 called as a witness on behalf of the Government, and being  
11 first duly sworn, testified as follows:

12  
13 DIRECT EXAMINATION BY MP. WAGNER:

14 Q       Miss Rice, I would like you, if you would, to explain  
15       to the jury what your present occupation is?

16 A       I'm a teller at Marine Midland.

17 Q       Do you have a particular branch office you work with?

18 A       Yes, the Marine Midland Center.

19 Q       What is the address?

20 A       Main and Seneca.

21 Q       That is the big tall building right downtown?

22 A       Yes.

23 Q       Approximately how long have you worked at that bank?

24 A       A year and a half.

25 Q       Could you explain to the jury just generally, what kind



## Testimony of Karen Rice.

- 1 of work you do, what kind of duties you have?
- 2 A I do teller work, paying and receiving.
- 3 Q Were you working as a teller on July 31, 1975?
- 4 A Yes.
- 5 Q Last summer?
- 6 A Yes.
- 7 Q Can you tell us approximately what time of day you got
- 8 to work?
- 9 A Approximately 8:15.
- 10 Q Where in the bank do you work?
- 11 A I work at a teller's position. It was the third
- 12 position from the end.
- 13 Q Could you give the jury a brief idea of what the
- 14 inside of the bank is where you work?
- 15 A It is quite large, it has seven tellers positions, at
- 16 the end of the tellers' row, there are two note cages.
- 17 Q Are there doors into the main - -
- 18 A Doors directly in front of the tellers' windows, and
- 19 there would be a door to my left.
- 20 Q Now, would you tell us if there came a time on July
- 21 31st when you were working as a teller that your bank
- 22 was robbed?
- 23 A Yes, there was.
- 24 Q I would like you, as best you recall, to tell the
- 25 jury what happened, explain to them, describe for them

## Testimony of Karen Rice.

1 what happened?

2 A I was doing the mail at my window and I looked up and  
3 saw a man walking past me with a note in his hand, so  
4 I asked him if I could help him. He came to my window,  
5 he gave me the note, and I read the note. The note  
6 said to fill the bag with tens, twenties, and to do as  
7 I was told and I wouldn't get hurt.

8 Q I will show you Government's Exhibit 1 for identifica-  
9 tion, and I will ask you if you can recognize that,  
10 please?

A Yes, I do.

Q Would you tell the jury what that is?

13 A That is the note I was handed the day of the robbery.

14 Q Would you continue on, please, telling the jury what  
15 happened after that?

16 A I told him that I didn't have a bag, and at that time  
17 he took a gun and put it in my face, and I told him  
18 that I would get a bag.

19 Q Can you tell us how the man appeared, how his dress  
20 was?

21 A He had on a cap, it was dark with like white specks in  
22 it. It was a golf cap. He had on sunglasses with  
23 visors on the sides. He had on a dark jacket, a shirt,  
24 dark pants.

25 Q When you say a dark jacket, what would that have been,



## Testimony of Karen Rice.

- 1 can you describe what the jacket was like?
- 2 A. A suitcoat jacket.
- 3 Q. Do you know the color?
- 4 A. It was dark in color.
- 5 Q. Tell us what else happened from that point on.
- 6 A. He put the gun in my face, I told him I would get a
- 7 bag, and I walked to my right to get a money bag.
- 8 I got the money bag, came back to my window, filled it
- 9 with the money from my drawer. He said to me was that
- 10 all. He said he wanted large bills, I think. I opened
- 11 the drawer and showed it to him, I said, "That is all
- 12 I have." I gave him the money, he turned and left.
- 13 Q. Do you recall approximately what time it was that he
- 14 first came up to you?
- 15 A. It was about 10:15.
- 16 Q. About how long a time had lapsed from when he came to
- 17 when he left?
- 18 A. Oh, I would say approximately three or four minutes.
- 19 Q. I would like you, as best you can, under the circumstances,
- 20 to describe what the gun was like?
- 21 A. It was a revolver type gun, it was dark in color.
- 22 Q. A handgun or revolver?
- 23 A. Handgun.
- 24 Q. Do you recall if he had it in his hand?
- 25 A. Oh, yes. Well, he had it in his jacket, he took it out

## Testimony of Karen Rice.

1 with his hand.

2 Q I'm going to show you what has been marked Government's  
3 Exhibit 6 for identification, and I will ask you if you  
4 can recognize that?

5 A Yes.

6 Q Can you tell us what that is, as best you would know?

7 A To my knowledge, that is the gun that he used.

8 Q Is that similar to the gun, in any event?

9 A Yes.

10 Q Mrs. Rice, I will also show you what has been marked in  
11 a plastic bag as Government's Exhibit 9 for identifica-  
12 tion, and I will ask you if you can tell us what that  
13 is, if you recognize it in any way?

14 A That is the type of jacket that was worn.

15 Q Is it approximately the same color?

16 A Yes.

17 Q How about the style and the material?

18 A Yes.

19 Q You wouldn't know if that was the same one, is that  
20 right?

21 A No.

22 Q When you first saw the man come in, will you describe  
23 if he was carrying anything that you noticed?

24 A Yes, I noticed that he had a note in his hand.

25 Q Anything else?



## Testimony of Karen Rice.

- 1 A. No.
- 2 Q. When he asked you for money and you said you would get
- 3 a bag, what kind of bag did you get?
- 4 A. A Marine Midland money bag, a canvas bag, beige in
- 5 color.
- 6 Q. Did you get that from the teller area?
- 7 A. Yes, I did.
- 8 Q. I will show you what has been marked Government's
- 9 Exhibit 16 for identification, which is in a plastic
- 10 envelope, do you recognize that, please?
- 11 A. Yes.
- 12 Q. Could you tell us what that is?
- 13 A. That is the bag that I put the money in.
- 14 Q. Do you recognize that?
- 15 A. Yes.
- 16 Q. Is there anything else about that that you would know
- 17 that you had seen it before?
- 18 A. My signature is on it.
- 19 Q. When did you put that on?
- 20 A. The day of the robbery.
- 21 Q. That was following the robbery?
- 22 A. Yes.
- 23 Q. Do you recall approximately how much it was or did you
- 24 subsequently learn approximately how much it was that
- 25 you gave the man that robbed you?

## Testimony of Karen Rice.

1 A Yes, I did.

2 Q How much was that?

3 A Approximately \$1,943.

4 Q You said the man was wearing a cap; as best you can  
5 recall, would you describe it for the jury?

6 A It was dark with a white-like speckle in it, it was a  
7 - - I call it a golf cap.

8 Q Showing you another exhibit, Government's Exhibit 10  
9 for identification, I will ask you if you recognize that?

10 A Yes.

11 Q Can you tell us what that is, please, if you know?

12 A Well, it looks like the cap that was worn that day.

13 Q It is the same style and the same color?

14 A Yes.

15 Q The same material, as best you would know?

16 A As best I would know, yes.

17 Q Can you describe for us the glasses the man had on?

18 A He had on sunglasses. The thing I remember the most  
19 about them is there was a visor on the side of them.

20 That I remember, it really caught my attention, it was  
21 so unusual.

22 Q Showing you Government's Exhibit 12 for identification,  
23 which is a pair of regular glasses, I will ask you if you  
24 will look at those, if you recognize anything about those?

25 A The visor.



## Testimony of Karen Rice.

- 1 Q Would you tell the jury what that is?
- 2 A A clear glass around the sides.
- 3 Q I will show you Government's Exhibit 13 for identification,
- 4 and would you tell us if you recognize those or if not?
- 5 A They're sunglasses.
- 6 Q You wouldn't recognize them specifically, though?
- 7 A No.
- 8 THE COURT: Which was which?
- 9 MR. WAGNER: Government's Exhibit 12 for
- 10 identification are the clear glasses,
- 11 Government's Exhibit 13 are the sun-
- 12 glasses.
- 13
- 14 BY MR. WAGNER:
- 15 Q I would like you, if you would, please, to tell the
- 16 jury what the man's demeanor was like and his voice and
- 17 his behavior when you first saw him and throughout the
- 18 encounter with him?
- 19 A He was calm, he rarely spoke, he only said a few words
- 20 to me.
- 21 Q Do you recall what the words were?
- 22 A He said - - I remember he asked me if that was all I
- 23 had or is that everything, and he said something about
- 24 large bills or big bills. I knew he meant fifties and
- 25 one hundreds, and I remember thinking I don't have any,

## Testimony of Karen Rice.

- 1           you'll have to take what I have.
- 2   Q       Do you recall if you could smell or detect alcohol on
- 3           his breath at that time?
- 4   A       No.
- 5   Q       You don't recall?
- 6   A       I don't remember smelling anything.
- 7   Q       Did the man have difficulty talking to you?
- 8   A       Not to my knowledge.
- 9   Q       Did he slur his words in any manner?
- 10   A       Not that I remember.
- 11   Q       Would you describe how he appeared physically, how
- 12           he walked, how he stood, how he moved?
- 13   A       He seemed to walk normally.
- 14   Q       Did he walk at a normal pace?
- 15   A       Yes. He didn't run out of the bank or anything, he
- 16           walked normally.
- 17   Q       Did he have trouble walking from your area to the door,
- 18           if you know?
- 19   A       No.
- 20   Q       He walked straight?
- 21   A       Yes.
- 22   Q       Now, when you got the money, would you tell us what
- 23           you did, where you got the money from, what you know
- 24           about that?
- 25   A       The money was on the left-hand side in the top drawer,



## Testimony of Karen Rice.

- 1 and I removed the money from the top drawer and put it  
2 into the bag.
- 3 Q Do you know anything about that money?
- 4 A Yes.
- 5 Q Would you tell the jury about that?
- 6 A Well, it consisted of ones, fives, tens, twenties in a  
7 bait pack.
- 8 Q What is a bait pack?
- 9 A A bait pack is marked money and it is used specifically  
10 for the purpose of if we are held up.
- 11 Q Do you know, of your own knowledge, how the bait pack  
12 comes into existence and where the markings are recorded?
- 13 A Yes.
- 14 Q Would you explain to the jury what that is?
- 15 A The bait pack consists of twenty \$5 bills, and it is  
16 recorded by the officers in the bank and a list is kept  
17 by the officers in the vault.
- 18 Q Each teller has that money in her cage?
- 19 A Yes.
- 20 Q Does a certain teller cage have a certain bait pack?
- 21 A Yes.
- 22 Q Are you sure you handed him the bait package?
- 23 A That is the first thing I handed him, yes.
- 24 Q Did you do anything else when you went over to the  
25 money area?

## Testimony of Karen Rice.

- 1 A When I gave him the bait pack, I activated the camera.
- 2 Q What do you mean?
- 3 A The bottom bill in the bait pack is under a clip, and
- 4 when you pull the bottom bill out, it activates - -
- 5 the clip is released and the cameras are set off in
- 6 the bank.
- 7 Q These cameras are surveillance cameras?
- 8 A Yes.
- 9 Q Do you know if they took pictures?
- 10 A Yes, I do.
- 11 Q I will show you Government's Exhibit 20 for identifica-
- 12 tion, I would like you to look at that, and if you
- 13 recognize it, tell the jury what it is?
- 14 A It is a picture of the person leaving the bank immedi-
- 15 ately after the robbery.
- 16 Q Is that a picture of the robber, as you recall it?
- 17 A Yes, it is.
- 18 Q And would you say that picture accurately depicts the
- 19 scene of the bank and the man that robbed you?
- 20 A Yes, I would.
- 21 Q Showing you what has been marked Government's Exhibit
- 22 20(a) for identification, again, I would like you to
- 23 look at that, please, and tell us what that is, if you
- 24 know?
- 25 A To my knowledge, a picture of the robber leaving the



## Testimony of Karen Rice.

- 1 bank immediately afterwards.
- 2 Q Does that also accurately reflect the scene and the man  
3 that robbed you?
- 4 A Yes.
- 5 Q I will show you Government's Exhibit 21 for identifica-  
6 tion. Again, I would like you to look at it and tell  
7 us if that is recognizable to you?
- 8 A Yes, it is.
- 9 Q Would you tell us what that is?
- 10 A The robber leaving the bank after the holdup.
- 11 Q Showing you Government's Exhibit - - does that accurately  
12 and truly reflect the robber, as you recall him?
- 13 A Yes.
- 14 Q Showing you Government's Exhibit 22 for identification,  
15 do you recognize that?
- 16 A Yes, I do.
- 17 Q Again, could you tell us what that is?
- 18 A That is an accurate picture of the robber leaving the  
19 bank after the holdup.
- 20 Q Again, with Government's Exhibit Number 23 for identi-  
21 fication?
- 22 A That is an accurate picture of the robber leaving the  
23 bank after the holdup.
- 24 Q Government's Exhibit 24 for identification?
- 25 A An accurate picture of the robber leaving the bank after

## Testimony of Karen Rice.

1 the holdup.

2 Q Government's Exhibit 25 for identification?

3 A An accurate picture of the robber leaving the bank after  
4 the holdup.

5 Q Government's Exhibit 26 for identification?

6 A An accurate picture of the robber leaving the bank after  
7 the holdup.

8 Q Government's Exhibit 27 for identification?

9 A An accurate picture of the robber leaving the bank  
10 after the holdup.

11 Q We only have two left. Showing you Government's Exhibit  
12 28 for identification?

13 A An accurate picture of the robber leaving the bank after  
14 the holdup.

15 Q And Government's Exhibit 29 for identification?

16 A An accurate picture of the robber leaving the bank after  
17 the holdup.

18 MR. WAGNER: Your Honor, at this time, I would,  
19 at this time, move the photographs,  
20 Government's Exhibits 20(a) and 21  
21 through 29 in evidence, and ask that the  
22 jury be allowed to examine them once  
23 they are in evidence. I would move them  
24 into evidence.

25 THE COURT: Let's take one thing at a time.



## Testimony of Karen Rice.

1 MR. TRAFALSKI: Your Honor, no purpose has been  
2 stated why these are to be admitted in  
3 evidence. I will object to their ad-  
4 mission at this time.

5 THE COURT: What is the ground for the objec-  
6 tion?

7 MR. TRAFALSKI: I have no idea why these are being  
8 placed in evidence.

9 THE COURT: Are you complaining that they are  
10 irrelevant or - -

11 MR. TRAFALSKI: At the present time, yes, sir,  
12 your Honor.

13 THE COURT: All right, sustained.

14 MR. WAGNER: If I could be heard on that. She  
15 has testified that that is a picture of  
16 the man that robbed her.

17 THE COURT: I understand.

18 MR. WAGNER: Your Honor - -

19 THE COURT: Nothing yet has connected those  
20 pictures with this defendant.

21 MR. WAGNER: Well, your Honor, they connect the  
22 robber. It seems to me that the jury  
23 is entitled to see pictures of the robber  
24 and make their own determination as to  
25 whether - -

## Testimony of Karen Rice.

1 THE COURT: No. In due course, perhaps.

2 MR. WAGNER: All right. I would move into

3 evidence, Government's Exhibit 1 for

4 identification, which is the demand note

5 given to the tellers, and I would ask

6 that the jury be allowed to examine

7 that.

8 MR. TRAFALSKI: Same objection, your Honor.

9 THE COURT: Yes, same ruling, Mr. Wagner, at

10 this time.

11

12 BY MR. WAGNER:

13 Q I would like you to tell us what happened after the

14 man walked out of the bank, as far as you know, what

15 did you do next?

16 A I pulled the alarm.

17 Q Okay. Can you explain how you did that?

18 A There is a small box underneath the teller's window,

19 it has a plug, you pull the plug out.

20 Q That is an alarm that the bank has been robbed?

21 A Yes.

22 Q I take it that shortly after that the police arrived?

23 A Yes.

24 Q And fellows from the FBI arrived too?

25 A Yes.



## Testimony of Karen Rice.

- 1 Q Would you tell us what happened shortly after that,  
2 if anything?
- 3 A To myself?
- 4 Q Right.
- 5 A I was questioned by the Buffalo Police Department and  
6 FBI.
- 7 Q I take it that you gave them information about the  
8 robbery?
- 9 A Yes, I did.
- 10 Q Did there come a time later that morning that you saw  
11 someone that you identified as the robber?
- 12 A Yes.
- 13 Q I would like you to tell us about when that was, tell  
14 the jury what happened?
- 15 A It was approximately twenty-five minutes, a half hour  
16 later, I was brought out to the banking floor and asked  
17 to identify the robber.
- 18 Q Did you see a man there at that time?
- 19 A Yes, I did.
- 20 Q Do you know who he was with, that is, was he with other  
21 people, do you know who they were?
- 22 A I'm assuming they were members of the FBI.
- 23 Q What did you do when you saw this man, did you recognize  
24 him?
- 25 A Yes.

## Testimony of Karen Rice.

- 1 Q Where did you recognize him from?
- 2 A From holding me up.
- 3 Q That is the same man that robbed you?
- 4 A Yes.
- 5 Q Do you see him in the courtroom today, the same man
- 6 that robbed you?
- 7 A Yes.
- 8 Q Would you look around and if you see him, identify him
- 9 for us?
- 10 A The gentleman sitting over there in the gold shirt.
- 11 Q Sitting next to Mr. Trafalski?
- 12 A Yes.

13 MR. WAGNER: Your Honor, at this time, I would

14 renew the offer of Government's Exhibits

15 20, 20(a) and 21 through 29, arguing at

16 this time that there is a sufficient

17 link between the photographs and the

18 defendant.

19 THE COURT: Mr. Trafalski?

20 MR. TRAFALSKI: I have no objection.

21 THE COURT: All right. Government's Exhibits

22 20, 20(a), 21 through 29 are received

23 in evidence.

24 (Thereupon, Governments Exhibits

25 20, 20(a), and 21 through 29, premarked



## Testimony of Karen Rice.

1 for identification, were received and  
2 marked in evidence.)

3  
4 MR. WAGNER:

Your Honor, I would ask also that  
5 the jury be allowed to examine these  
6 now.

7 THE COURT:

All right, show them to the jury.

8  
9 (Photographs referred to were displayed to the jury.)  
10

11  
12 MR. WAGNER:

I would move in evidence, - -

13 THE COURT:

Wait a minute. Wait until they  
14 look at the photographs.

15 MR. WAGNER:

Yes, your Honor.

16 THE COURT:

All right, Mr. Wagner.

17 MR. WAGNER:

Your Honor, I would move in evidence  
18 at this time, Government's Exhibit 1 for  
19 identification.

20 MR. TRAFALSKI:

No objection.

21 THE COURT:

Without objection, Government's  
22 Exhibit 1 is received in evidence.

23  
24 (Government's Exhibit 1, prepared  
25 for identification, was received and

## Testimony of Karen Rice.

marked in evidence.)

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BY MR. WAGNER:

Q Miss Rice, going back to the photograph that you earlier identified, they were taken a few seconds apart, you can see the same scene in them, I would like you to tell us, starting with Government's 20 for identification, where in that scene you would have been working? In other words, would you be working to the left of the picture, to the right, to the rear?

A To the rear.

Q Could you show us or describe for the jury the scene you have, the scene of the picture, what you see here in addition to the man, doors or walls or whatever.

A On his right there are two elevators, to his left, the box is here, the night depository.

Q What is behind the man?

A The bank, that is the entrance to the main banking floor.

Q Are those doors behind him?

A Yes, they are.

Q Would those pictures have been taken, if you know, prior to him coming or after he left you?

A After he left me.

Q Do you recognize anything that he was carrying with



## Testimony of Karen Rice.

1 him at the time?

2 A. Yes.

3 Q. What is that?

4 A. Well, I assume that is the bag with the money in it.

5 THE COURT: Don't assume.

6 THE WITNESS: The bag with the money in it.

7

8 BY MR. WAGNER:

9 Q. What does it look like?

10 A. It looks like the bag with the money in it.

11 Q. The other exhibits, Government's Exhibits 20(a) and

12 21 through 29 are all in the same area?

13 A. Yes.

14 Q. All with the doors at the back?

15 A. Yes.

16 Q. Coming out of the area where you work?

17 A. Yes.

18 Q. Mrs. Rice, when the man pointed the gun at you, can  
19 you describe, approximately, where he was standing and  
20 where the gun was?

21 A. He was standing directly in front of me and the gun  
22 was in his right - - inside the right side of his  
23 suitcoat.

24 Q. When he displayed the gun to you, where was the gun?

25 A. In front of my face.

## Testimony of Karen Rice.

1 Q Approximately how far was the gun from your face, if  
2 you can give us an estimate?

3 A Approximately six inches.

4 Q And what was your mental state at that time when this  
5 was shown to you?

6 A I was frightened, very frightened.

7 Q Did you think it was a real gun at the time?

8 A Yes.

9 MR. TRAFALSKI: Your Honor, I object to the leading.

10 THE COURT: It is a leading question, strike  
11 that.

12 BY MR. WAGNER:

13 Q Did you have an opinion at the time as to whether or  
14 not the gun was real or not real?

15 MR. TRAFALSKI: Same objection, leading.

16 THE COURT: No, overruled.

17 THE WITNESS: I just felt it was real. I wasn't  
18 going to question it.

19 MR. WAGNER: I have no further questions for  
20 Mrs. Rice, your Honor. Thank you.

21  
22 CROSS EXAMINATION BY MR. TRAFALSKI:

23 Q Mrs. Rice, did you make any notes of this occurrence  
24 or did you make any statements of what occurred to the  
25 FBI Agents?

\* \* \*



## Testimony of Thomas Langer.

1 T H O M A S D. L A N G E R, 20 Fountain Parkway, Buffalo,  
2 New York, called as a witness on behalf of the Government,  
3 and being first duly sworn, testified as follows:

4 DIRECT EXAMINATION BY MR. WAGNER:

5 Q Mr. Langer, I would like you, sir, to tell the jury  
6 what your occupation is?

7 A I'm a special agent with the FBI.

8 Q Approximately, sir, how long have you been an FBI  
9 Agent?

10 A Approximately two and a half years.

11 Q And would you describe what kind of work you do, what  
12 duties you perform?

13 A I'm assigned to organized crime and I investigate  
14 violations of Federal Law and gather evidence in cases  
15 where the Government is party.

16 Q Were you working, sir, in that capacity on July 31,  
17 1975?

18 A Yes.

19 Q Did there come a time, Mr. Langer, that morning, that  
20 you received a routine report of a bank robbery at the  
21 Marine Midland Bank at Main and Seneca Streets in  
22 Buffalo?

23 A Yes, sir.

24 Q Could you tell us how you got that report, what you did  
25 after that, please?

## Testimony of Thomas Langer.

1 A I was in our office here on Huron Street when they  
2 announced that the bank robbery had occurred, at which  
3 time I left the office with two other agents in a Bureau  
4 car.

5 Q Approximately, if you recall, what time was that that  
6 you got the report of the robbery?

7 A I believe approximately 10:15.

8 Q When you left the office, who else was with you?

9 A Special Agent Dennis Sculimbrene and Special Agent  
10 John Gill.

11 Q Would you tell the jury what you did after you left the  
12 office?

13 A We got into one of our vehicles and we proceeded down  
14 to the vicinity of the bank.

15 Q And what did you do when you got down there?

16 A Well, we were told over the car radio - - we were given  
17 a general - -

18 THE COURT: What?

19 THE WITNESS: We were told, we were told over the  
20 car radio - -

21 MR. TRAFALSKI: I object to anything that occurred  
22 through a radio communication.

23 MR. WAGNER: If I could be heard?

24 THE COURT: No, I will overrule the objection.  
25



## Testimony of Thomas Langer.

- 1 BY MR. WAGNER:
- 2 Q Tell us, generally, were you given a description of
- 3 the man on the radio?
- 4 A Yes, sir.
- 5 Q And were you still in the car with Mr. Gill and Mr.
- 6 Sculimbrene?
- 7 A Yes, I was.
- 8 Q Do you know if there were other agents in the area also?
- 9 A Yes, there were.
- 10 Q Specifically, who else was there that you know of?
- 11 A The only one I can recall is Special Agent Lee Eidson.
- 12 Q Where was he, if you know?
- 13 A He was again in the vicinity of the bank.
- 14 Q Would you tell us what else happened when you were in
- 15 the area of the bank in your car?
- 16 A We went down in the area of the General Donovan Building
- 17 when we were called over the radio by Special Agent
- 18 Eidson, at which time we met up with him, with his
- 19 vehicle, and he advised us that he had observed an
- 20 individual who had generally fit the physical character-
- 21 istics of the individual, the description of the
- 22 individual which was given to us over the car radio.
- 23 Q Did you take your car near Mr. Eidson's car?
- 24 A Yes.
- 25 Q Did you see any individual also that fit this description?

## Testimony of Thomas Langer.

1 A Yes, sir.

2 Q I would like you to explain to the jury, first of all,  
3 Mr. Langer, about what time this was?

4 A Approximately 10:20, 10:25.

5 Q So it was just a few minutes after you left the office?

6 A Yes.

7 Q Would you tell the jury, as best you recall, what  
8 happened, what you saw, what you did?

9 A Well, at that point I, myself, got out of the passenger's  
10 - - front passenger's side of the car, Special Agent  
11 Gill was driving and Special Agent Sculimbrene was  
12 sitting in the back seat - - we got out of the car to-  
13 gether, all three of us, and then I called to this indi-  
14 vidual and told him that we were the FBI and asked him  
15 to stop.

16 Q Mr. Langer, I take it your car was in the street or - -

17 A Yes, sir.

18 Q Or the side of the street, where was the individual,  
19 sir?

20 A At the time the car stopped and we were out of the car,  
21 he was approximately one hundred feet away from us.

22 Q Can you explain to the jury where the entire transaction  
23 took place with respect to where the bank is?

24 A Approximately three or four blocks away from the bank,  
25 on Exchange Street.



## Testimony of Thomas Langer.

- 1 Q In Buffalo?
- 2 A In Buffalo.
- 3 Q When you saw the fellow, can you describe what he looked  
4 like, what he was wearing?
- 5 A Yes, sir. He was approximately five foot eleven,  
6 approximately thirty-two years old, approximately one  
7 hundred sixty pounds and at that time, he was wearing  
8 dark pants, I believe he had a T-shirt on at that time  
9 and - -
- 10 Q Was this a black man or white?
- 11 A A black man.
- 12 Q Do you know if he had anything with him?
- 13 A He was carrying a green and blue cloth bag.
- 14 Q When you first saw him, sir, about how far were you from  
15 him?
- 16 A The first time, when we were still in our car, I would  
17 say the furthest point was approximately a hundred  
18 fifty feet.
- 19 Q Would you tell us what you did after you got out and  
20 saw this man?
- 21 A I again got out of the car, I called to him, and I asked  
22 him to stop or halt.
- 23 Q What did he do, if anything?
- 24 A He turned around and saw me - -
- 25 THE COURT: He turned around anyway, you don't

## Testimony of Thomas Langer.

1 know what he saw, he turned around.

2 THE WITNESS: He turned and faced me, at which

3 time he broke into a full run.

4

5 BY MR. WAGNER:

6 Q Did he run toward you or next to you or away from you?

7 A Away from me.

8 Q Would you describe to the jury what you did at that

9 point?

10 A I again called to him that we were with the FBI, and

11 at this time I started to pursue him in a run, he also

12 was running.

13 Q Was there anybody else running along with you, if you

14 know?

15 A Yes, Special Agent Gill and Special Agent Sculimbrene

16 were behind me.

17 Q Of three of you, you were the lead, so to speak?

18 A Yes.

19 Q Now, can you describe what kind of terrain that was

20 that you were running on?

21 A Initially, it was a flat terrain, I believe a parking

22 lot, and then we went to more or less like a vacant

23 lot which had like bricks and rocks and holes, and it

24 is a little rougher terrain.

25 Q Did you continue to pursue this man?



## Testimony of Thomas Langer.

- 1 A Yes.
- 2 Q Did you ever catch him?
- 3 A Yes. I pursued him approximately two and a half blocks
- 4 until he finally stopped.
- 5 Q During that two and a half block pursuit, were you
- 6 running at a fast speed or a very slow jog?
- 7 A No, it was a very fast speed.
- 8 Q Would you say that you were running about the same
- 9 speed throughout the course of the run or did your
- 10 speed vary?
- 11 A About the same speed.
- 12 Q Did the man run in a straight line or a jagged line
- 13 or - -
- 14 A He ran in a pretty straight line. He made one little
- 15 turn to go around a corner, other than that it was a
- 16 strictly straight line.
- 17 Q Subsequently, sir, you testified that you got near this
- 18 man?
- 19 A Yes, sir.
- 20 Q I would like you to describe for the jury what happened
- 21 when you got near him, what did you do?
- 22 A When I was up parallel to him, within about six feet,
- 23 I had my weapon drawn, and I again told him to stop
- 24 and freeze, and at this point I think I more or less
- 25 saw my weapon out and he then stopped.

## Testimony of Thomas Langer.

- 1 Q Well, did he then - - In any event, did he turn around  
2 and look at that point?
- 3 A Yes.
- 4 Q What did you do when he stopped?
- 5 A I told him to put his hands on his head and just stand  
6 still.
- 7 Q Did he have anything with him at that time?
- 8 A Yes, he had a bag, a green and bluish cloth bag in his  
9 hand, and I asked him to drop it, and he would not  
10 drop it, at which time I took it out of his hand.
- 11 Q Mr. Langer, was that the same green and blue bag that  
12 you remember him - - seen him carrying when you first  
13 saw him?
- 14 A Yes, sir.
- 15 Q Showing you what has been marked Government's Exhibit  
16 11 for identification, which is in a plastic envelope,  
17 I will ask you to take that out and look at it and if  
18 you recognize it, tell the jury what that is, please?
- 19 A Yes, sir, I do recognize this as being the bag that  
20 Mr. Miller had in his hand at the time I stopped him.
- 21 Q Now, just to clear up one point, at the time you stopped  
22 him, did you know his name?
- 23 A No, sir.
- 24 Q You subsequently learned his name?
- 25 A I subsequently learned his name.



## Testimony of Thomas Langer.

- 1 Q Would you tell us what happened then, you took the bag  
2 out of his hand?
- 3 A At this point, I examined the contents of the bag.
- 4 Q Can you tell us, sir, what you found in the bag?
- 5 A Yes, sir. I found what I later determined to be a  
6 Colt - - a replica of a Colt Police .38 revolver.
- 7 Q Showing you Government's Exhibit 6 for identification,  
8 I will ask you if you can recognize that, sir, and if you  
9 do, I would like you to tell the jury what that is?
- 10 A Yes, sir, I recognize this as being the replica of  
11 the Colt .38 revolver which I found in the green and  
12 blue bag.
- 13 Q Did you find anything else in the bag?
- 14 A Yes, sir, I did. I found a pair of sunglasses.
- 15 Q Showing you Government's Exhibit 13 for identification,  
16 I will ask you if you recognize those?
- 17 A Yes, sir.
- 18 Q Would you tell the jury what they are?
- 19 A These are the sunglasses that I found in the green and  
20 blue bag.
- 21 Q Anything else you found in the bag, sir?
- 22 A Yes, sir, I found a pair of safety glasses.
- 23 Q Would you describe those for us?
- 24 A These are just clear safety glasses with a plastic along  
25 the sides.

## Testimony of Thomas Langer.

1 Q I will show you Government's Exhibit 12 for identifica-  
2 tion.

3 A Yes, sir, I recognize the safety glasses as being the  
4 ones I found in the blue and green bag.

5 Q Would you tell us what else you found in the bag, if  
6 anything else?

7 A I found a green shirt, what appeared to be a male shirt,  
8 belonging to a male.

9 Q Showing you Government's Exhibit 14 for identification,  
10 I would like you to tell us if you recognize that, if  
11 you can, sir?

12 A Yes, sir, I do, the green shirt I found in the green and  
13 blue cloth bag.

14 Q Anything else, sir, in the bag at that time?

15 A I found an A.M.&A's paper bag.

16 Q Showing you Government's Exhibit 17 for identification,  
17 again, would you examine that and tell us what that is,  
18 if you know?

19 A Yes, sir, this is the green and blue paper A.M.&A's  
20 bag that I found in the blue and green cloth bag.

21 Q Would you tell us if you found anything else in the  
22 bag?

23 A I found a five and a half inch blade knife. ✓

24 Q Can you describe what that was like for us?

25 A It's silver in color with a figurine on top.



## Testimony of Thomas Langer.

1 Q When you say "on top", what do you mean?

2 A On the handle.

3 Q Showing you Government's Exhibit 7 for identification,  
4 do you recognize that, sir?

5 A Yes, sir, I recognize this as being the knife which  
6 I found in the green and blue cloth bag.

7 Q Did you find anything else?

8 A I found a knife case.

9 Q Would you describe what that was like?

10 A A brown knife case, approximately five or six inches  
11 long.

12 Q Showing you Government's Exhibit --

13 THE COURT: A knife case?

14 THE WITNESS: A knife case.

15

16 BY MR. WAGNER:

17 Q K-n-i-f-e?

18 A Yes, sir.

19 Q Showing you Government's Exhibit 15 for identification.

20 A Yes, sir, I recognize this as being the knife case I  
21 found in the green and blue cloth bag.

22 Q Did you find anything else in the bag?

23 A I found a man's sportcoat or suitcoat.

24 Q Can you describe that?

25 A Grey in color.

## Testimony of Thomas Langer.

- 1 Q Showing you Government's Exhibit 9 for identification,  
2 I would like you to look at that, sir, and tell us  
3 if you can remember that and, if so, what that is,  
4 please?
- 5 A Yes, sir, I recognize it as being the grey jacket that  
6 I found in the blue and green cloth bag.
- 7 Q Anything else in the bag?
- 8 A I found a purple and black cap in the bag.
- 9 Q Showing you Government's Exhibit 10 for identification.
- 10 A Yes, sir, this is the purple and black cap which I  
11 found in the blue and green cloth bag.
- 12 Q Did you find - -
- 13 THE COURT: What is that number?
- 14 MR. WAGNER: That's Government's Exhibit 10.
- 15 THE COURT: Actually, Government's Exhibit 10  
16 is the cap itself, Mr. Wagner?
- 17 MR. WAGNER: Actually, these have been in bags,  
18 Mr. Langer is opening the bags as he is  
19 testifying. I will ask that Mr. Langer  
20 put the exhibits back into the right  
21 bags so there is no confusion here.
- 22 BY MR. WAGNER:
- 23 Q Mr. Langer, inside this blue and green bag, was there  
24 anything else?  
25



## Testimony of Thomas Langer.

1 A. I found a white Marine Midland cloth bag.

2 Q. Can you tell us what that looked like and anything else  
3 you know about it?

4 A. It had on the face of it, on one side of it, the words  
5 Marine Midland.

6 Q. Showing you Government's Exhibit 16 for identification,  
7 that again is in a plastic bag, I will ask you to take  
8 the contents out and examine them, please.

9 A. Yes, sir, this is the white Marine Midland bag that  
10 I found in the green and blue cloth bag.

11 Q. Can you tell us if you found anything else?

12 A. Yes, sir, I found also in the green and blue cloth  
13 bag approximately \$1,943 in American currency.

14 Q. Mr. Langer, the exhibits that you have just identified  
15 for us, including the last one, the currency, what did  
16 you do with those at that time, and subsequent to that?

17 A. Well, I took all the items, including the \$1,943, back  
18 to the bank.

19 Q. Did you have any other dealings with this fellow you  
20 apprehended at that time, or did you just take custody  
21 of these items?

22 A. I mainly just took custody of these items. I saw him  
23 for a couple of seconds later.

24 Q. Can you tell us who was with you then?

25 A. I maintained custody of all the previously mentioned

## Testimony of Thomas Langer.

1 items and I went alone. Special Agent Sculimbrene and  
2 Special Agent Gill and Special Agent Eidson took custody  
3 of the subject.  
4 Q Special Agent Eidson, is he a special agent with the  
5 FBI, sir?  
6 A Yes, he is since retired.  
7 Q Do you know where he is living now?  
8 A In Coco Beach, Florida.  
9 Q Mr. Eidson was an agent at the time?  
10 A Yes, he was.  
11 Q They went with Mr. Miller, is that what you are saying,  
12 Mr. Eidson, Mr. Gill and Mr. Sculimbrene left with Mr.  
13 Miller?  
14 A Yes, sir.  
15 Q What did you do?  
16 A I returned to the bank in the vehicle that we had came  
17 down originally in, I went alone.  
18 Q About how far were you from the bank when you returned?  
19 A Approximately three or four blocks.  
20 Q When you got back to the bank, what did you do, if  
21 anything?  
22 A I went through the money which I found in the cloth  
23 bag and compared it to a list that was supplied to me  
24 by the banking security people. It was a list of pre-  
25 recorded serial numbers of \$5 bills.



## Testimony of Thomas Langer.

- 1 Q Showing you Government's Exhibit 5 for identification,  
2 I will ask you if you can identify that, please?
- 3 A Yes, this is the list that was given to me by Paul  
4 Sciabarrasi of the Security Department of Marine Midland  
5 Bank.
- 6 Q Is that the list you were speaking about that you  
7 compared?
- 8 A Yes, sir.
- 9 Q Would you tell us the result of your examination of  
10 the bills as they compared to that list, if they did?
- 11 A After going through the \$1,943, I found - - in that  
12 currency, I found twenty \$5 bills which serial numbers  
13 are on this list.
- 14 Q Money you had found with the subject matched up with the  
15 serial numbers on that list?
- 16 A Yes, sir.
- 17 Q Mr. Langer, after that, what did you do with all of these  
18 items?
- 19 A I then took them back to the office and it was locked  
20 into a - - put into our evidence vault under lock and  
21 key.
- 22 Q Has it remained there until preparation for trial?
- 23 A To the best of my knowledge.
- 24 Q The money you mentioned, did you bring that with you  
25 today?

## Testimony of Thomas Langer.

1 A Yes, I did.

2 Q Perhaps you could explain how you retrieved that today?

3 A The money was stored in a safety deposit box at the  
4 Marine Midland Bank. It was put into the vault by myself  
5 and Special Agent Eidson. I retrieved it from the bank  
6 today.

7 Q Now, the money is kept separate from the other items,  
8 is that right?

9 A Yes.

10 Q You have the money bag with you, sir?

11 A Yes, I do.

12 Q This has been marked as Government's Exhibit 18 for  
13 identification, is that right?

14 A Yes, sir.

15 Q I would like you to take this knife, please, and break  
16 the seal on the bag and take the money out for us.

17 (Witness opens bag.)

18 Q Is that the money you recovered, sir?

19 A Yes, sir.

20 Q Is there anything on that that would indicate to you  
21 that that was the same money you recovered?

22 A Yes, sir, it has my initials on it and the date that  
23 I located it.

24 Q By the way, when you seized these items, did anybody  
25 assist you?



## Testimony of Thomas Langer.

1 A. Yes, Special Agent Eidson did.

2 Q. Is it the practice for one of the agents to somehow  
3 identify the items at the time?

4 A. Yes.

5 Q. How was that?

6 A. By putting the agent's initials and the date that the  
7 item was recovered right on the article as seized.

8 Q. Did you do that or did Special Agent Eidson do that?

9 A. Yes, sir, either I or Mr. Eidson.

10 Q. Mr. Langer, the man that you chased after that day on  
11 July 31st, do you see him in the courtroom today?

12 A. Yes, I do.

13 Q. Would you point him out for us?

14 A. The individual sitting over here.

15 Q. Would you describe him?

16 A. A black male with a - - I can't see the color of that - -

17 Q. Sitting next to Mr. Trafalski?

18 A. Yes, sir.

19 MR. WAGNER: Let the record reflect, please,  
20 that that is the defendant in this case,  
21 Mr. Miller.

22  
23 BY MR. WAGNER:

24 Q. Mr. Langer, going back to where you first saw Mr.  
25 Miller and when you chased him and apprehended him, I

## Testimony of Thomas Langer.

1 would like you to tell the jury what his demeanor was  
2 like at the time and describe his behavior and his  
3 attitude and his appearance, as best you can.

4 A. He, right from about the point where I had asked him to  
5 halt, recognized - - or he turned around and he faced  
6 me, and at which time he turned away from me and commenced  
7 to run in a full run. It was in a straight, determined  
8 path, apparently knew which direction he was going in,  
9 and - -

10 MR. TRAFALSKI: I object to that.

11 THE COURT: Yes. You have no idea of what was  
12 in his mind. Describe what you saw,  
13 what he did.

14 THE WITNESS: Up to the point where I had stopped  
15 him, he was a little nervous, but he  
16 acted in a normal fashion.

17  
18 BY MR. WAGNER:

19 Q. When you stopped him and you were in his presence, did  
20 you smell alcohol on his breath, sir?

21 A. No, sir.

22 Q. Did he exhibit, from your experience, any unusual outward  
23 physical characteristics or behavior patterns?

24 A. No, sir.

25 Q. Were you able, at the time, or did you attempt to talk



## Testimony of Thomas Langer.

1 to this man?

2 A. I did not, sir.

3 Q. Would you describe how he stood, how he acted, when  
4 you - -

5 A. At the point where he stopped, he listened to whatever  
6 instructions I gave him, he put his hands on his head,  
7 he seemed to understand what I was talking about.

8 Q. Did you have any trouble communicating with the man  
9 with the very few instructions you did give him?

10 A. No, sir.

11 Q. Other than the first one when you asked him to halt?

12 A. Yes, sir.

13 MR. WAGNER: I have no further questions for  
14 Mr. Langer. Thank you.

15 MR. TRAFALSKI: May we approach the sidebar?

16 THE COURT: All right.

17  
18 (Thereupon, an off the record  
19 discussion ensued at the sidebar.)

20  
21 THE COURT: I will take a brief recess at this  
22 time, the jury may be excused.

23  
24 (Jury exited the courtroom at  
25 2:35 p.m.)

## Defendant's Motion for Mistrial.

1 MR. TRAFALSKI: Your Honor, I respectfully move  
2 before this Court for a mistrial in this  
3 case based upon the fact that a weapon,  
4 a knife, was produced which was allegedly  
5 found - -  
6 THE COURT: A knife, weapon or what?  
7 MR. TRAFALSKI: A weapon, to wit, a knife, was  
8 produced which was found in some bag  
9 allegedly in the possession of the  
10 defendant. He is not charged with using  
11 a knife or attempting to use a knife.  
12 He is charged with using a replica  
13 pistol or a toy gun in this instance.  
14 The prejudice of that knife being brought  
15 in here fairly outweighs the introduction  
16 of it into evidence or the production of  
17 it before this Court and jury. Now the  
18 jury is of the opinion that perhaps Mr.  
19 Miller would have used a knife, et  
20 cetera, or that he had an actual knife  
21 in his possession where there is no  
22 allegation of that in any stage of this  
23 proceeding, he is charged with a toy  
24 pistol.  
25 MR. WAGNER: Your Honor, I disagree with Mr.



## Defendant's Motion for Mistrial.

1 Trafalski. First of all, there is  
2 evidence that the knife was in his  
3 possession, it was found in the bag.

4 THE COURT:

There is no evidence that it had  
5 anything to do with the robbery.

6 MR. WAGNER:

We are not alleging it did. There  
7 is no testimony, there is no argument  
8 that he threatened the teller with the  
9 knife. That is an argument outside the  
10 facts. The fact is that the man had a  
11 knife in his possession when he robbed  
12 the girl. That is directly relevant  
13 for two reasons. First of all, - -

14 THE COURT:

What has that got to do with it?

15 MR. WAGNER:

First of all, if an insanity  
16 defense is later raised, which I expect  
17 it may be, it proves that - - and part  
18 of the insanity defense is going to be  
19 that the man did not appreciate the  
20 wrongfulness of his acts, that is the  
21 law, we are going to argue that a man  
22 who did not appreciate the wrongfulness  
23 of the act, and therefore thought it was  
24 not wrong to rob banks, would not take  
25 steps to harm himself, would not take

## Defendant's Motion for Mistrial.

1 steps to flee, would not take steps to  
2 conceal his identity, change his clothes  
3 after the robbery, would not take steps  
4 to write out a demand, if he thought it  
5 was not wrong, he would not do those  
6 things. Mr. Miller is charged with  
7 assaulting the teller by obviously  
8 pointing the gun at her, but the question  
9 might be in the jury's mind does he do  
10 that knowingly and willfully and in-  
11 tentiously, that is, does he appreciate  
12 that a weapon is a weapon, that the gun  
13 might scare you. Does he have an under-  
14 standing of guns? If Mr. Miller were a  
15 man from a foreign culture and knew  
16 nothing about guns, you might argue that  
17 it wasn't intentional because he didn't  
18 know what a gun was. The fact is, he  
19 was carrying a knife, and he was carrying  
20 it with him when he was arrested, it  
21 shows that he knows. I think the jury  
22 can infer - - we can argue that he had  
23 it, it's an inference that he had it - -

THE COURT:

24 It did not come into the activities  
25 at the bank.



**Defendant's Motion for Mistrial.**

1 MR. WAGNER:

I think if a man has a knife in his pocket, it shows his guilty state of mind, it shows that it is a willful act.

2  
3  
4 THE COURT:

No. I think your first argument is good, that is, it may have some bearing upon the overall sanity and finding of objectivity of the defendant.

5  
6  
7  
8 MR. WAGNER:

I think, your Honor, - -

9 THE COURT:

If it is in for that purpose, fine. Otherwise, we have a prejudice of the knife being brought into view of the jury and talked about as being on the defendant's person when, in fact, it had no involvement with the bank.

10  
11  
12  
13  
14 MR. WAGNER:

Well, Mr. Trafalski can obviously argue - - I am not arguing that it did have an involvement at the bank - - he can argue that he didn't show it to the teller, we are not saying he did.

15  
16  
17  
18  
19 THE COURT:

There is going to be the insanity defense evidence put in, and I don't know what the substance of it will be, how much there will be to it, but I can agree if it is in, it has some probity, but it is seemingly better to wait bring-

20  
21  
22  
23  
24  
25

## Defendant's Motion for Mistrial.

1                   ing in items to rebut that until you  
2                   get to a rebuttal situation. Neverthe-  
3                   less, I am not going to grant the mis-  
4                   trial at this point. We will take a  
5                   recess. That denial is without preju-  
6                   dice, Mr. Trafalski.

7 MR. TRAFALSKI:

                  Yes, your Honor. Thank you, your  
8                   Honor.

9  
10                   (Thereupon, the court was in recess  
11                   at 2:40 p.m.)  
12  
13  
14

15                   \* \* \* \* \*

16  
17  
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23  
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25  
  
H. T. Noel & E. F. Knisley

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WESTERN DISTRICT OF NEW YORK



## Testimony of John Gill.

1 A Then we left the bank, back into the car again, myself  
2 and Mr. Sculimbrene and Mr. Eidson, and we drove to the  
3 Buffalo Office of the FBI.

4 Q And Mr. Miller?

5 A And Mr. Miller.

6 Q The Buffalo Office is here on Huron Street?

7 A Yes.

8 Q About how long did it take?

9 A Again, about five minutes.

10 Q Would you tell us what happened after you got to the  
11 Buffalo Office?

12 A We then went into the Buffalo Office and the same four  
13 of us went into an interview room, and we again asked  
Mr. Miller questions concerning the robbery.

14 Q Before you asked Mr. Miller any questions, did you talk  
15 to him that you recall, in any other respect?

16 A We briefly reiterated the rights, something to the  
17 effect that he had a right to remain silent.

18 Q Did Mr. Miller say anything to you at that time?

19 A He said, again, as I remember, "You caught me, I might  
20 as well tell you the truth."

21 Q Then did you and Mr. Eidson or Mr. Sculimbrene have  
22 any further conversation with Mr. Miller at that time?

23 A We talked to him about the bank robbery.

24 Q I would like you to describe for the jury how the  
25

## Testimony of John Gill.

1 conversation took place, that is, who said what, as  
2 best you recall, and also tell what was said by whom,  
3 as best you recall.

4 A As I recall, the three of us asked him questions con-  
5 cerning the robbery. Mr. Miller replied to the questions.

6 Q Can you tell us, as best you recall, what questions about  
7 the robbery?

8 MR. TRAFALSKI: Your Honor, I object to this. I  
9 don't know who is asking him the ques-  
10 tion. If counsel is asking him what he  
11 said and what the defendant said to him,  
12 it is fine, I have no objection. I can't

13 - -

14 MR. WAGNER: I think I can clarify that.

15  
16 BY MR. WAGNER:

17 Q I would like you to tell the jury what Mr. Miller said  
18 in your presence. Not what other said, what Mr. Miller  
19 said in your presence.

20 A He admitted being the one who committed the robbery  
21 at the Marine Bank, and then he provided the statement  
22 to us to that effect.

23 Q Can you tell us the details of his statement, as best  
24 you recall them?

25 A The statement itself, as I recall it, essentially said



## Testimony of John Gill.

1 that he went to the Marine Midland Bank with the  
2 intention of robbing it and he did so.

3 Q Did he tell you anything about when he made his plans,  
4 what he used for his plans?

5 A Yes, he did. He said he got up in the morning at home  
6 and, as I remember, he wrote out his demand note at  
7 home, which he carried to the bank, and he eventually  
8 arrived at the bank shortly after 10:00 that morning  
9 and went in and handed the note to the teller, got  
10 money and he exited the bank, went to the General  
11 Donovan Building where he removed his jacket, and  
12 started walking home.

13 Q How long did that conversation take place with the three  
14 agents and Mr. Miller?

15 A A total of twenty minutes, half hour.

16 Q When that was done, Mr. Gill, when you finished this  
17 conversation with him, what happened after that, sir?

18 A When we finished the conversation, we called for a  
19 stenographer to come into the room. Mr. Eidson dictated  
20 a statement to the stenographer.

21 Q I would like you to explain to the jury what the  
22 procedure was, what the method was, who dictated that  
23 statement?

24 A Mr. Eidson dictated the statement, and he told Mr.  
25 Miller if anything was wrong to let him know and we

\* \* \*

**Renewal of Defendant's Motion for Mistrial.**

(Thereupon the jury exited the  
courtroom at 11:25 a.m.)

MR. TRAFALSKI:

Your Honor, at this time I renew  
my motions made previously at the close  
of the People's case.

THE COURT:

All right. You had a motion for  
a dismissal or a directed verdict and  
you had a motion for a mistrial. I will  
deny the motion to dismiss but, Mr.  
Wagner, what about the mistrial?

MR. WAGNER:

Your Honor, as I understand it,  
Mr. Trafalski's grounds are that a knife  
which was found on the defendant was  
mentioned in the trial although that is  
not going into evidence, nor will the  
jury see it. My position is that it is  
certainly not prejudicial. I feel that  
the knife would be admissible, if the  
Court saw fit, I won't argue the point,  
I don't feel it is that probative to  
our case, but the fact is that the  
defendant did have it on his presence  
when arrested, that is the testimony  
and there is no evidence to contradict



## Renewal of Defendant's Motion for Mistrial.

1 that. Because it was on his presence,  
2 because it is a weapon clearly, because  
3 the man is charged with a crime involving  
4 force and violence and premeditation,  
5 intent, knowledge, scheme, design, motive,  
6 the fact that he carried a weapon with  
7 him, in my opinion is very relevant.

8 THE COURT: In the absence of your having asked  
9 the psychiatrist anything about it --

10 MR. WAGNER: About the knife?

11 THE COURT: -- how would this interrelate with  
12 any competency or knowledge or intent?

13 MR. WAGNER: I did not ask the psychiatrist about  
14 the knife because Mr. Trafalski objected  
15 to it being used, and your Honor prevented  
16 it from being admitted.

17 THE COURT: That is right. At that time you  
18 were indicating that this had a bearing  
19 upon the man's mental competency and  
20 intentions at that time because here he  
21 was carrying this weapon, although he  
22 had the toy gun or replica of a gun.

23 MR. WAGNER: I did not ask the doctor about the  
24 knife, I did not want to raise an issue  
25 that Mr. Trafalski had objected to.

**Renewal of Defendant's Motion for Mistrial.**

1 THE COURT:

You mean you did not understand me  
when I indicated that my ruling at that  
time was without prejudice to the  
renewal of that motion, and that you  
were going to somehow interrelate this  
into the competency problem?

7 MR. WAGNER:

Apparently I did not understand that.  
It is my position, Judge, that the  
decision I made was based on the fact  
that having a replica pistol with him  
is support for that argument. The  
argument can be made to the jury on the  
replica pistol. The danger of invoking  
Mr. Trafalski's disapproval, because I  
am anxious to avoid any problem at all  
that I can avoid, because we had the  
gun to support the same argument, I  
was prepared to drop the knife issue  
completely, but I don't think it is  
prejudicial. I don't think there is  
anything wrong with it, but I felt that  
under all of the circumstances, weighing  
what I had with the additional benefit  
that knife would give us, it was not  
worth taking the risk of creating an



**Renewal of Defendant's Motion for Mistrial.**

1 issue at trial when I had so much other  
2 corroborating facts to make my same  
3 argument. If the knife was the only  
4 item, perhaps I would have argued more  
5 vigorously for it, but because of Mr.  
6 Trafalski's objection and because it was  
7 not admitted in evidence and because  
8 I had the gun to support the same  
9 argument, to raise the same argument,  
10 I felt that to argue concerning the  
11 knife was perhaps, to use a phrase, a  
12 slight measure of overkill. I don't  
13 think I needed it that bad, but I don't  
14 think it is prejudicial or improper.

15 THE COURT:

Do you have anything you want to  
say on that, Mr. Trafalski?

17 MR. TRAFALSKI:

Your Honor, the mentioning of the  
18 knife by the officer involved -- I  
19 believe it was Officer Langer -- and  
20 the production of it in view of the jury,  
21 the defendant is charged with a crime  
22 which needs the use of violence and  
23 force to take possession of the money,  
24 he is not charged, one, with any  
25 possession of a knife or the use of any,

## Renewal of Defendant's Motion for Mistrial.

1 he is charged with the toy pistol. The  
2 conclusion which the jury can draw from  
3 the introduction of the knife into  
4 evidence or the fact of just bringing  
5 it before them are so prejudicial that  
6 they outweigh its probative value, and  
7 I believe it has tainted the jury's  
8 mind to the point where they have a  
9 different picture of this defendant than  
10 as was testified to before this Court.

11 MR. WAGNER:

I would like to just rebut briefly,  
12 your Honor. Mr. Miller isn't specifically  
13 charged with having a toy pistol, nor  
14 is it necessary to charge the defendant  
15 with possession of those instrumentalities  
16 which give rise to the force, violence,  
17 intimidation or assault. He is not  
18 charged by specifically saying, 'You have  
19 assaulted her with a pistol or you have  
20 assaulted her with a gun.' He is charged  
21 with by force, violence and intimidation.  
22 I think more importantly, he is charged  
23 with doing that willfully.

24 THE COURT:

That has a bearing on the assault  
25 aspect of Subsection (c), does it not?



## Renewal of Defendant's Motion for Mistrial.

1 MR. WAGNER: I don't believe the knife has any  
2 relevancy if she didn't see --

3 THE COURT: That is right, that is what Mr.  
4 Trafalski is saying. So therefore he  
5 is saying that Mr. Miller is then  
6 prejudiced by having a knife brought  
7 into the evidenciary picture.

8 MR. WAGNER: I disagree, I think that the value  
9 of the knife, if it were admitted and  
10 argued, is that it shows knowledge,  
11 intent, scheme, design, consciousness  
12 of --

13 THE COURT: That is why I particularly note the  
14 absence of any follow-up in that regard  
15 with the psychiatrist.

16 MR. WAGNER: I think Dr. Miller -- Dr. Schutkeker  
17 had his own report -- Dr. Miller said  
18 he based part of his conclusion, it was  
19 a factor, that the man had carried out  
20 a plan. I think the fact that he  
21 carried with him a note, a knife, a gun,  
22 that he changed his clothes, shows  
23 plan. The fact that we will not be  
24 allowed to argue that the knife was  
25 part of the plan is one aspect of it,

## Renewal of Defendant's Motion for Mistrial.

1 but for the jury to have heard that the  
2 knife was found on him, in a sense that  
3 is prejudicial only as far as everything  
4 else against him, the entire Government's  
5 case is prejudicial to the defendant.  
6 The photographs are prejudicial to him  
7 in the sense they incriminate him, the  
8 handgun incriminates him, being caught  
9 with the bait money incriminates him.  
10 It is all prejudicial to him.

11 THE COURT: You have to have something that has  
12 relevance.

13 MR. WAGNER: Well --

14 THE COURT: The knife and the bag, with no  
15 knife being shown in the bank or other-  
16 wise used, has no relevance.

17 MR. WAGNER: It doesn't have --

18 THE COURT: I thought you were going to show  
19 relevance?

20 MR. WAGNER: I think it has relevance if it were  
21 admitted, but I think I can argue  
22 strenuously that it is not prejudicial  
23 either. Like the A.M.&A's bag has no  
24 relevance, no probative value, other  
25 than it was on him, anymore than a



**Renewal of Defendant's Motion for Mistrial.**

1 handkerchief in his pocket, but it is  
2 not prejudicial. As a matter of fact,  
3 I think the knife, if it were admitted,  
4 would be admitted very wisely on the  
5 argument that it does show plan, it  
6 shows consciousness that the act was  
7 wrong.

8 THE COURT:

Well, I agree. In a situation  
9 where there was not psychiatric testimony  
10 based upon psychiatric examination, I  
11 could see that you would leave this to  
12 lay argument and lay evaluation, but  
13 where you have psychiatric testimony and  
14 an issue of insanity in the case, it  
15 seems to me that ought to have been  
16 dealt with by the psychiatrist --

17 MR. WAGNER:

Your Honor --

18 THE COURT:

-- particularly in view of what I  
19 understood you to say at the time I  
20 denied the motion for a mistrial without  
21 prejudice.

22 MR. WAGNER:

When the knife was not admitted in  
23 evidence, it is my understanding that  
24 for me to discuss it would cause two  
25 problems; one, it might be improper,

**Renewal of Defendant's Motion for Mistrial.**

1 not necessarily prejudicial, but improper  
2 for me to be discussing with the  
3 psychiatrist items not in evidence and,  
4 two, because Mr. Trafalski had objected  
5 to mentioning the knife, and because  
6 your Honor had sustained his objection  
7 to its offer into evidence, I balanced  
8 the need to argue that particular item  
9 along with all the other items I had  
10 available, and that is the reason I  
11 didn't mention it.

12 THE COURT:

You left me with the raw problem  
13 of whether or not there was any substan-  
14 tial prejudice to the defendant from  
15 having that mentioned. I will decide  
16 that. We will be back here at 1:00  
17 o'clock and I will be able to tell you  
18 then what my ruling is on this motion  
19 for a mistrial, also, if there is no  
20 mistrial, we will go into oral arguments  
21 and I will advise you at that time what  
22 I am doing with your requests.

23 MR. WAGNER:

Could I make one other point that  
24 just comes to mind? It seems to me that  
25 because Mr. Trafalski is essentially



**Renewal of Defendant's Motion for Mistrial.**

1 conceding that the events of the robbery  
2 took place by his client, that the method  
3 of its occurrence, the means by which  
4 it was carried out, does not become  
5 that relevant anymore. The question is  
6 what was his mental state at that time.  
7 So whether the man drove through the  
8 doors of that bank with a tank or  
9 attacked it with machine guns, really  
10 isn't the question. The jury, I would  
11 presume, at this point has only evidence  
12 indicating that Mr. Miller robbed the  
13 bank, and it is virtually conceded, so  
14 what he did, whether he had guns or  
15 knives, isn't going to prejudice the  
16 key decision they are to make. The key  
17 decision they are going to make is his  
18 mental condition, and I think Mr.  
19 Trafalski will agree with that. What  
20 he had on him, knives or guns or machine  
21 guns or antiaircraft weapons, that is  
22 not going to be a factor which will  
23 in effect decide whether he robbed the  
24 bank or not. It seems to me on that  
25 basis the mention of a knife or a gun

**Renewal of Defendant's Motion for Mistrial.**

1 or anything else, the magnitude of its  
2 importance is reduced considerably when  
3 the element is one of insanity.

4 THE COURT: Do you want to respond?

5 MR. TRAFALSKI: Yes, your Honor. I can't put  
6 myself in the position of what a juror  
7 is going to think when deliberating.  
8 Granted, the primary part of this trial  
9 has been an insanity type defense with  
10 two separate and distinct physicians,  
11 each testifying diametrically opposed  
12 to the other. However, it does not  
13 preclude the defense from stopping what  
14 they believe to be prejudicial matters  
15 from entering into a trial. I don't  
16 know the effect of mentioning and showing  
17 the knife to the jury. I honestly can't  
18 tell you what effect it will have upon  
19 the jury, whether or not that would be  
20 a fact they would use to convict the  
21 defendant or to acquit him, I can't  
22 tell you that. The only thing I can  
23 tell you is that I feel that it's highly  
24 prejudicial. Since there is no mention  
25 of a knife in the indictment, in any



**Renewal of Defendant's Motion for Mistrial.**

1 form, in anything, even in his confession,  
2 and now it is brought before this Court  
3 and jury, I don't know what they are  
4 going to do. It is prejudicial enough  
5 that I believe a mistrial should be  
6 granted.

7 MR. WAGNER:

8 One more point which Mr. Trafalski ✓  
9 just raised. The knife was admitted  
10 after he was given warning of it, he was  
11 given the entire 3500 material, he was  
12 given everything I had on that, including  
13 reports of witnesses that were never  
14 called. Mr. Trafalski was given a list  
15 of the inventory of the items seized  
16 at the time we had a suppression hearing.  
17 He knew that was in the bag, and he is  
18 now saying that he sat back -- I am not  
19 saying he did it intentionally -- I am  
20 saying he sat back and let the knife  
21 be raised and is now saying the knife  
22 should not have been mentioned. The fact  
23 is it was on the 302 relating to the  
24 seizure. He had the material, I gave  
25 it to him before the trial began, and if  
he felt it was prejudicial, I would

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WESTERN DISTRICT OF NEW YORK

105.

## Renewal of Defendant's Motion for Mistrial.

1 suggest at that time he should have made  
2 a motion to suppress that item of  
3 evidence. His failure to do so is a  
4 waiver of that going into evidence, and  
5 I say additionally, that is not even  
6 prejudicial.

7 MR. TRAFALSKI:

Your Honor, if the Court recalls,  
8 as soon as there was a mention of the  
9 knife, I objected to it.

10 THE COURT:

He is indicating, of course, that  
11 you ought to have been moving, pretrial,  
12 to suppress any evidence of the knife.

13 MR. TRAFALSKI:

Your Honor, the suppression of the  
14 knife, as I understand the law of search  
15 and seizure, if in fact there is an  
16 unlawful search and seizure, in this  
17 instance I made a determination, of  
18 course, there was no basis for a  
19 suppression hearing on the evidence  
20 since it was -- the evidence was obtained  
21 through a lawful arrest at the time.  
22 Now, the only alternative --

23 THE COURT:

Your attention was focused on the  
24 possibility of there being a violation  
25 of the Fourth Amendment, for example,

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WESTERN DISTRICT OF NEW YORK

106



**Renewal of Defendant's Motion for Mistrial.**

1 in the seizing of the bag, and once you  
2 surmounted the problem and satisfied  
3 yourself that you had no basis for  
4 attacking that, you dropped that aspect  
5 of the matter?

6 MR. TRAFALSKI:

I did drop that but --

7 THE COURT:

Your attention never came into the  
8 probability that there might have been  
9 an enumeration of the bag's contents,  
10 which would have included enumeration  
11 of the knife and the knife case?

12 MR. TRAFALSKI:

That is correct, your Honor. Then  
13 at trial I immediately objected when  
14 there was some mention of a knife found  
15 in the bag.

16 THE COURT:

I think you were prompt in that.

17 MR. WAGNER:

But, your Honor, he still knew  
18 about the knife before it was mentioned.  
19 We're dealing with the expense, the  
20 time, the investment of a vast amount  
21 of our judicial system, the Court, the  
22 clerk, the reporter, the jury. For a  
23 defendant to sit back and let all the  
24 evidence come in and say, 'I wish that  
25 hadn't gone in --'

## Renewal of Defendant's Motion for Mistrial.

1 THE COURT: No matter what I do, if you have  
2 that solicitude for that and of our  
3 Government in the future, maybe you  
4 ought not to have mentioned the knife.

5 MR. WAGNER: I am convinced, your Honor, there  
6 is nothing improper about it. How can  
7 I speculate as to what Mr. Trafalski  
8 will object to or what he won't. I  
9 suppose I could offer no evidence, but  
10 that is not the way you prosecute cases.

11 THE COURT: There should have been no mention  
12 of the knife. I will have to decide  
13 whether it is prejudicial. 1:00 o'clock.

14  
15 (Thereupon the court was in recess  
16 at 12:00 noon.)  
17  
18  
19  
20

21 \* \* \* \* \*  
22  
23  
24  
25



## Renewal of Defendant's Motion for Mistrial.

1 PROCEEDINGS RESUMED, QUANT TO RECESS, COMMENCING AT 1:10 P.M.

2  
3 (Defendant present, counsel present,  
4 jury absent.)

5  
6 THE COURT:

Mr. Trafalski, upon further  
7 consideration, I have decided to deny  
8 your motion for a mistrial, deeming that  
9 there has been no material or substantial  
10 prejudice to your client in this  
11 situation.

12 MR. TRAFALSKI:

Thank you, your Honor.

13 THE COURT:

As far as the requests to charge  
14 are concerned, I have really a request  
15 to charge from Mr. Trafalski on behalf  
16 of the defendant, comprising four pages,  
17 and basically, with the exception of the  
18 last full paragraph on the second page,  
19 which differs somewhat from the charge  
20 I am going to give, which comes from  
21 United States vs. Freeman in the Second  
22 Circuit, I will be charging what you  
23 have there. As far as the Government's  
24 requests --

25 MR. WAGNER:

Your Honor, Mr. Trafalski and I

\* \* \*

Instructions to Jury on Count III of Indictment.

1 when you return your verdict, that is,  
2 if it is a verdict of guilty and, of  
3 course, I am making no intimation as to  
4 what it should be.

5 Finally, in Count 3 of the indict-  
6 ment, this is the final charge in the  
7 indictment, it says: "That on or about  
8 the 31st day of July 1975, in the  
9 Western District of New York, the  
10 defendant, Alfred Daniel Miller, willful-  
11 ly, unlawfully and with felonious intent  
12 did by force, violence and intimidation  
13 take from the presence of Karen Rice  
14 approximately \$1,943 in money belonging  
15 to and in the care, custody, control,  
16 management and possession of the Marine  
17 Midland Bank Western, Main and Seneca  
18 Streets, Buffalo, New York, the deposits  
19 of which were then insured by the  
20 Federal Deposit Insurance Corporation,  
21 and Alfred Daniel Miller in committing  
22 the aforesaid offense, did assault said  
23 Karen Rice;" all in violation of Section  
24 2113(d) of the Criminal Code.

25 That subsection in pertinent part



**Instructions to Jury on Count III of Indictment.**

1 says: "whoever, in committing or  
2 attempting to commit any offense defined  
3 in Subsection (a) -- which is what I  
4 dealt with in Count 1 -- or in Subsection  
5 (b) -- which is what I dealt with in  
6 Count 2 -- assaults any person, shall be  
7 guilty of an offense against the laws  
8 of the United States," namely, a violation  
9 of Section 2113(d).

10 To sustain its burden under Count 3  
11 of the indictment, the Government must  
12 prove four essential elements. First,  
13 the act or acts of taking from the person  
14 or presence of another money belonging  
15 to or in the care, custody, control,  
16 management or possession of a bank whose  
17 deposits were insured by the Federal  
18 Deposit Insurance Corporation. Second,  
19 the act or acts of taking such money  
20 by force or violence or by intimidation  
21 or with intent to steal or purloin.  
22 Third, the act or acts of assaulting  
23 any person while engaged in taking such  
24 money from the bank, as charged, and  
25 fourth, doing such acts or acts willfully.

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WESTERN DISTRICT OF NEW YORK

III.

**Instructions to Jury on Count III of Indictment.**

1 Now, as stated before, the burden is  
2 always upon the prosecution, the Govern-  
3 ment, to prove beyond a reasonable  
4 doubt every essential element of the  
5 crime charged in each one of these  
6 counts, and the law never imposes upon  
7 the defendant in the criminal case the  
8 burden or duty of calling any witnesses  
9 or producing any evidence.

10 If you should find beyond a reason-  
11 able doubt from the evidence in the  
12 case that the accused did willfully  
13 commit robbery of the bank, as charged,  
14 then you must proceed to determine  
15 whether the evidence in the case  
16 establishes that the accused, Mr. Miller,  
17 in committing robbery of the bank,  
18 assaulted Karen Rice, as charged in the  
19 indictment. Any willful attempt or  
20 threat to inflict injury on the person  
21 of another, when coupled with the  
22 apparent present ability to do so, or  
23 any intentional display of force, such  
24 as would give the victim reason to fear  
25 or expect immediate bodily harm,

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112



## Instructions to Jury on Count III of Indictment.

1 constitutes an assault. An assault may  
2 be committed without actually touching  
3 or striking or doing bodily harm to the  
4 person of another. So a person who has  
5 the apparent present ability to inflict  
6 bodily harm or injury upon another  
7 person, and willfully attempts or even  
8 threatens to inflict such bodily harm,  
9 as by intentionally flourishing or  
10 pointing a pistol or gun at another  
11 person, may be found to have assaulted  
12 such person. Sometimes there is a mis-  
13 understanding by non-lawyers concerning  
14 assault, and I know you have heard the  
15 term "assault" and you have heard the  
16 phrase "assault and battery". Battery  
17 is what is involved in the actual  
18 striking or touching or injuring a  
19 person, and the assault is something  
20 that can well be short of actually doing  
21 that harm. It is only the assault  
22 aspect that is required as an element  
23 of proof in Count 3 of this indictment.

24 There are certain rules of law,  
25 some of which I have already mentioned,

\* \* \*

## Discussion at Time of Sentence.

1 CLERK: Criminal 75-198, United States versus  
2 Alfred Daniel Miller.  
3 THE COURT: Remain seated for a moment, Mr. Miller.  
4 Mr. Trafalski, are you aware of a motion made  
5 by Mr. Miller for a dismissal of the case  
6 for the reason of not according him a speedy  
7 trial?  
8 MR. TRAFALSKI: Yes.  
9 THE COURT: Have you received the Government's  
10 answer to that?  
11 MR. TRAFALSKI: Yes, I have, your Honor.  
12 THE COURT: What is your position on that?  
13 MR. TRAFALSKI: Your Honor, the motion was made hereto-  
14 fore. I advised the defendant at the time  
15 it was at our request that he be examined  
16 for psychiatric purposes. We did have him  
17 examined by two psychiatrists, and it took  
18 that amount of time, as the Court is aware,  
19 to get a report of the both psychiatrists  
20 before the Court and myself to determine  
21 whether or not the defense of insanity did  
22 lie. The Court is also aware of the fact  
23 that I came into the case after he was  
24 assigned a previous counsel, Mr. Quinn.  
25 THE COURT: The Government states that he was



## Discussion at Time of Sentence.

1 arrested on 7/31/75, and we had an order --  
2 this was for the second examination, this  
3 was by Dr. Miller, when was it? Was there  
4 an order for Dr. Schutkeker's examination,  
5 Mr. Wagner?

6 MR. WAGNER: Yes, your Honor. I believe it was  
7 November 25h. I am sure it was.

8 THE COURT: Had that been sought by then counsel,  
9 I guess, Mr. Quinn?

10 MR. TRAFALSKI: No, your Honor, that was sought by  
11 myself.

12 THE COURT: And was it on or about that date that  
13 you sought it?

14 MR. TRAFALSKI: Yes, it was.

15 MR. WAGNER: That was the day we met in court. I  
16 believe you orally ordered it, and asked us  
17 to prepare a written order. It is my  
18 recollection the record will show the order  
19 was given orally at the time.

20 THE COURT: All right. Then I signed a further  
21 order, did I not, for Dr. Miller?

22 MR. WAGNER: Your Honor --

23 THE COURT: I know it was on the March 15th calendar.

24 MR. WAGNER: You ordered it again orally in court.  
25 We delivered a written order. To my

## Discussion at Time of Sentence.

1 recollection, that was at the time you took  
2 a vacation, and I dropped it off at your  
3 office. I am sure you did order it orally  
4 in court.

5 MR. TRAFALSKI: That is correct, your Honor.

6 THE COURT: All right. When was Dr. Schutkeker's  
7 report received, do you know?

8 MR. TRAFALSKI: February 7th, I believe, your Honor.

9 MR. WAGNER: I received it in our office February  
10 6th. I talked to Mr. Trafalski about it.  
11 I believe I gave him a copy that day or sent  
12 him one, I'm not sure.

13 MR. TRAFALSKI: I received it on, I believe, February  
14 7th.

15 MR. WAGNER: Dr. Schutkeker sent his report to our  
16 office instead of the Court. I recall talk-  
17 ing to Mr. Trafalski and suggesting the  
18 necessity of a second examination, which he  
19 concurred in. We then met with the Court  
20 a few days after that at the calendar and  
21 prepared that request to your Honor.

22 THE COURT: Dr. Miller's report was dated May 11th  
23 and was received -- it is hard to read the  
24 particular stamp of the United States Attorney  
25 office but -- it yours more clear?



## Discussion at Time of Sentence.

- 1 MR. WAGNER: Ours indicates the 13th.
- 2 THE COURT: The 13th, all right, and our trial  
3 actually commenced on May 25th. When was  
4 discovery complete?
- 5 MR. WAGNER: Your Honor, it is my recollection that  
6 when Mr. Trafalski was assigned to the case  
7 he came into my office, and I think we  
8 discussed at that time what would normally  
9 be discoverable, and I provided him with  
10 information we had about Mr. Miller's involve-  
11 ment. He may have looked at the physical  
12 exhibits we had, the photographs, and I  
13 think --
- 14 THE COURT: It is your recollection there wasn't  
15 any proceedings?
- 16 MR. WAGNER: There was apparently no need for formal  
17 discovery because of the arrangements we made  
18 in the oral conversation.
- 19 MR. TRAFALSKI: Your Honor, I saw all of the evidence  
20 in the case, excluding the grand jury minutes,  
21 which were provided to me at trial, on the --  
22 perhaps a day after I was assigned, I believe.
- 23 THE COURT: All right. Beginning with -- what  
24 date did I say he was arrested?
- 25 MR. WAGNER: I believe on the 31st of July last year.

AFFIDAVIT OF SERVICE BY MAIL

State of New York )  
County of Genesee ) ss.:  
City of Batavia )

RE: United States  
vs  
Alfred Daniel Miller  
No. 76-1286

I, Leslie R. Johnson being  
duly sworn, say: I am over eighteen years of age  
and an employee of the Batavia Times Publishing  
Company, Batavia, New York.

On the 8th day of September, 19 76  
I mailed        copies of a printed Appendix in  
the above case, in a sealed, postpaid wrapper, to:

10 copies to: A. Daniel Fusaro, Clerk  
United States Court of Appeals, Second Circuit  
New Federal Court House  
Foley Square  
New York, New York 10007

2 copies to: Gerald M. Trafalski, Esq.  
820 Prudential Building  
Buffalo, New York 14202

at the First Class Post Office in Batavia, New  
York. The package was mailed Special Delivery at  
about 4:00 P.M. on said date at the request of:

Richard J. Arcara, United States Attorney, Att: Edward J. Wagner, Asst.  
United States Court House, Buffalo, New York 14202  
U.S. Attorney

Leslie R. Johnson

Sworn to before me this

8th day of September, 19 76

Patricia A. Lacey

PATRICIA A. LACEY  
NOTARY PUBLIC, State of N.Y., Genesee County  
My Commission Expires March 30, 1977